

UNITED STATES OF AMERICA
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

JORDAN BLAIR,)
)
Plaintiff,)
)
vs.) No. 1:02-CV-88 CAS
)
BOB WILLS, ET AL.,)
)
Defendants.)

TRANSCRIPT OF JURY TRIAL

BEFORE THE HONORABLE CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

April 12, 2004
Volume I

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1 (The following proceedings were held on April 12,
2 2004 at 9:13 a.m.):

3 THE COURT: Good morning.

4 MR. STILLEY: Good morning.

5 MR. OLIVER: Good morning.

6 THE COURT: We're here for the trial of Jordan Blair
7 versus Bob Wills, doing business as Mountain Park Boarding
8 Academy, et al. Representing plaintiff Blair is attorney
9 Oscar Stilley. Good morning, Mr. Stilley.

10 MR. STILLEY: Good morning.

11 THE COURT: And representing the defendants Bob
12 Wills, et al. is John Oliver.

13 MR. OLIVER: Your Honor.

14 THE COURT: And this is Russell Watters with you
15 here?

16 MR. BRIGGS: John Briggs, Your Honor.

17 MR. OLIVER: Your Honor, may I introduce Mr. Dave
18 Gibbs of the bar of Florida who won't participate in the
19 trial, but with the Court's permission if he could sit in
20 front of the bar and observe, we would appreciate it.

21 THE COURT: Very well.

22 MR. GIBBS: May I correct one thing, it's the bar of
23 Ohio.

24 THE COURT: You're getting closer. We have a number
25 of issues remaining, pretrial issues. And part of this whole

1 thing, we've only got two claims left, this Fair Labor
2 Standards Act and this civil -- single civil battery claim,
3 the plaintiff against Bo Gerhardt.

4 Now, one of the things, we got all these witnesses
5 that you're trying to belatedly come up with. It's as simple
6 as this, you know, you cannot hide the basketball and then
7 sneak out on the floor for a slam dunk, it is as simple as
8 that. This is not Perry Mason. You got to come on with it.
9 It's like playing cards, everybody got to turn their hands up
10 and see what you got, maybe the game don't even need to be
11 played, you see. If you got all threes and the other person
12 got all aces, please, then I can make a call and the game is
13 over. No point in playing that game. But here you are
14 trying to come up with a bunch of cards that you didn't turn
15 up. That's the problem.

16 MR. STILLEY: Your Honor, may I address that?

17 THE COURT: Go for it.

18 MR. STILLEY: Here's what the situation was. I had
19 tried to get information from the defendants about various
20 individuals, about names and contact information on the
21 various individuals. Was not able to get that. But now let
22 me explain what the situation is.

23 THE COURT: You know, when a person has a problem,
24 what do they do? Do you play golf?

25 MR. STILLEY: No, I don't.

1 THE COURT: Well, they call the official and they
2 ask the official for a ruling. Did you call me and ask me
3 for a ruling?

4 MR. STILLEY: Your Honor.

5 THE COURT: No, you didn't do that. See, now you
6 want to come up with this. You should have called, said we
7 got a problem, what we going to do, Mr. Official?

8 MR. STILLEY: Well, I understand that. But what the
9 rule says is that you have to either identify witnesses
10 either directly in response to discovery or Rule 26 or
11 otherwise identify these individuals in writing, whether it's
12 other litigation going against these individuals. And rather
13 than try to go through this again to try to get this
14 information, I simply listed all the former students and
15 staff at these facilities. And one of these gentleman,
16 Mr. Palmer, only got out about eight months ago, so it was
17 long after the litigation was started that we even knew that
18 he existed.

19 THE COURT: Well, you know, if you take anything to
20 an extreme, suppose you list everybody in the world as a
21 witness. Please. You know, there is some degree of
22 specificity that is needed. I'm going to let Mr. Oliver
23 respond to what you're talking about. Mr. Oliver.

24 MR. OLIVER: May it please the Court. First, Your
25 Honor, this was a subject, albeit briefly, of a discovery

1 conference and ruling between Your Honor, myself, and
2 Mr. Briggs on September the 23rd of 2003 in which the Court
3 made certain rulings, with respect to which we have complied
4 with one exception, which is the subject matter for the
5 further pretrial.

6 Since that time the plaintiff has not under their
7 duty under Rule 26(e)(1) supplemented either their Rule 26(a)
8 disclosures or their answers to interrogatories, particularly
9 my interrogatories for Palm Lane No. 34 and No. 35 and No.
10 36, in which I specifically asked for the name, address, and
11 telephone number of people with certain knowledge.

12 Judge, you're acquainted with this better than I am.
13 Your decision in Patterson versus State Farm was just
14 affirmed by the Eighth Circuit a little while ago in which
15 where the party did not under Rule 26(e)(1) supplement their
16 disclosures until the date that pretrial was due, Your Honor
17 excluded that evidence. The Eighth Circuit affirmed you.

18 And then most recently -- I understand I'm taking a
19 risk citing -- most recently, Your Honor, the Eighth Circuit
20 cited that opinion affirming you again in a case called
21 Troncanon (phonetic), in which the defendant tried to do what
22 Mr. Stilley did, which was to run in a bunch of witnesses on
23 the pretrial. And the Eighth Circuit citing to Your Honor's
24 affirmed opinion specifically held that not only -- not only
25 affirmed the trial court but affirmatively stated that the

1 trial court should exclude all witnesses who weren't listed
2 in 26(a) or a timely 26(a) supplement or answers to
3 interrogatories. With the exception of Lou Blair, which we
4 clearly admit we knew about. Mr. Stilley offered Lou Blair
5 to us to depose.

6 So with the exception of Lou Blair and the
7 plaintiff, all of these witnesses in this case that he's
8 listed -- except our clients obviously -- are inappropriate
9 and should be stricken.

10 THE COURT: Very well. Mr. Stilley, what do you
11 have to say to these thirty people basically, almost 30
12 people here you belatedly listed? Anything about any of them
13 that you've identified them or supplemented information about
14 them? You know, part of the reason people may want to take
15 depositions, take these people's statements, see what they
16 have to say. They have a right to do these things. That's
17 why we have these rules. It's not a surprise -- civil cases
18 are not a surprise situation. It is to explain to lay people
19 that it is simply like you have a hand, they have a hand, and
20 if they ask to see your cards, you just have to turn them up.
21 You turn your cards up and we see what everybody has so we
22 know where we're doing.

23 But when you don't do that, nobody knows what's
24 going on. It's a surprise situation. They have a right to
25 take these people's depositions, statements or whatever

1 investigation otherwise they wish to undertake. But when you
2 belatedly give up that information, then nobody knows.
3 You've taken advantage of our rules. So it's a problem. Is
4 there any exception with any of these people?

5 MR. STILLEY: Your Honor, I know I listed a number
6 of individuals. The only three that's in dispute is a lady
7 named Melissa Smith, a lady named Angela Collier, and a lady
8 named or a gentleman named Ray Palmer. That's the only three
9 we're talking about. Ray Palmer is the one that got out
10 about eight months ago.

11 THE COURT: Got out of what?

12 MR. STILLEY: Beg your pardon?

13 THE COURT: Got out? What are you saying?

14 MR. STILLEY: Out of Mountain Park. The other two
15 have been out for a considerable period of time. So -- let
16 me put it like this. If -- and I'd respect the Court's
17 ruling --

18 THE COURT: Is there some way that you were
19 prevented from knowing who these people were? What's the
20 problem?

21 MR. STILLEY: No, I was not. Well, I knew about --
22 I just dribble these people along. These people came to my
23 attention from time to time that I just from various sources
24 find out that these people existed.

25 THE COURT: Well, you remember when we had our

1 previous President in a pickle, he said he was going to tell
2 more rather than less. See, you're telling less rather than
3 more. You say you knew about these people but you didn't
4 want to tell anybody, see. So what do you want me to do?

5 MR. STILLEY: Judge, let me put it like this. I can
6 present all the evidence that I need with Mr. Jordan Blair
7 and Lou Blair.

8 THE COURT: Fine, then these other witnesses are
9 excluded. Now, let's see here about Mr. Lou Blair. There's
10 a motion to exclude him also.

11 MR. OLIVER: Her, Your Honor. This is Mrs. Blair.
12 It's the witness's grandmother.

13 THE COURT: I'm sorry.

14 MR. OLIVER: And might I suggest it might be
15 appropriate if the witnesses or potential witnesses that are
16 in the room weren't in the room.

17 THE COURT: Well, it doesn't bother me.

18 MR. OLIVER: All right. It doesn't bother me then.

19 THE COURT: If they are excluded, that's that. This
20 is just a legal matter.

21 MR. STILLEY: Your Honor, let me put it like this.
22 I do want to reserve for rebuttal, and I want to make sure I
23 have a clear understanding of that.

24 THE COURT: Rebuttal is somewhat different.

25 MR. STILLEY: That is correct.

1 THE COURT: We're talking about witnesses in your
2 case in chief.

3 MR. STILLEY: Correct.

4 THE COURT: Rebuttal witnesses are witnesses that
5 you're saying something came up that you need to rebut that
6 was not part of your case but was part of the defendant's
7 case and you are rebutting what they say. So you don't
8 necessarily know who those might be. So there's a
9 difference. What are you saying, Lou Blair then would be a
10 potential rebuttal witness?

11 MR. STILLEY: No, I'm saying Ms. Smith, Ms. Collier,
12 and Mr. Palmer would be potential rebuttal witnesses. And
13 Ms. Blair, I'm still contending she's a proper witness to
14 testify.

15 THE COURT: I'm not going to concern myself with
16 rebuttal witnesses until -- I'm not going to cross that
17 bridge until we get to it.

18 MR. STILLEY: Okay.

19 THE COURT: Now, so as far as witnesses in chief are
20 concerned, those witnesses are excluded. Now let's go to Lou
21 Blair.

22 MR. STILLEY: Okay.

23 THE COURT: My understanding is that the defendants
24 have moved to exclude Lou Blair based on the fact that the
25 witness has no relevant testimony other than information

1 relative to the plaintiff's juvenile detention. And that's
2 not part of this case.

3 MR. STILLEY: Your Honor, I understand that that's
4 not part of this case. There are some issues involved in
5 this. For example, the defendants sent me their copies of
6 their exhibits on the last day for me to object. And one of
7 those exhibits, Exhibit A, it has a statement in it from Ron
8 Blair talking about Jordan. And I was not able to talk to my
9 client before midnight on that date. Since that time I've
10 talked to him and we'd like to keep that out. It's Ron
11 Blair's statements about Jordan's situation.

12 THE COURT: Wait a minute. I'm talking about apples
13 and you've jumped over on oranges. I'm not following you.
14 What are you talking about?

15 MR. STILLEY: Well, Ms. Blair can explain actually
16 what the situation is with Jordan Blair. And if we don't
17 have these extraneous things, it may not be necessary to call
18 Ms. Blair.

19 THE COURT: Maybe if you object at the appropriate
20 time they won't come in, you know.

21 MR. STILLEY: Your Honor.

22 THE COURT: That's the whole idea of an objection.
23 Just like they file objections to these witnesses, you see.

24 MR. STILLEY: Your Honor, but once again they waited
25 until the very last day. I got this material on the very

1 last day. My client was at work and I could not talk with
2 him about this. I wanted to see what he had to say. And so
3 unless I was just going to object without discussing it with
4 him, I didn't have a way to object.

5 THE COURT: Are you talking about the potential of
6 another rebuttal witness perhaps? Is that what you're really
7 talking about?

8 MR. STILLEY: No. I think that this should be -- I
9 think I should be allowed to present her for my case in chief
10 to let the jury know --

11 THE COURT: To explain something that he's going to
12 present.

13 MR. STILLEY: No.

14 THE COURT: That's what you're telling me.

15 MR. STILLEY: That may be part of it. But to
16 explain about -- give a little background on Jordan Blair.

17 THE COURT: Well, you know, there used to be a
18 television program called This is Your Life. Now, this is
19 the court case here, this is not This is Your Rife, this is a
20 trial.

21 MR. STILLEY: I understand.

22 THE COURT: We don't need all that extraneous
23 information about his background. What do you want the jury
24 to say, oh, I feel sorry for him? That's going to be one of
25 my instructions, forget all that sympathy stuff, we've got to

1 rule on the law.

2 MR. STILLEY: I understand that. I certainly do.

3 THE COURT: Okay. Well, that witness is excluded
4 also. I mean, if it's a rebuttal situation, then you just
5 bring that to the Court's attention if there is a need for
6 rebuttal. So that witness is also excluded.

7 Mr. Oliver filed a lot of motions here. He's got a
8 motion to preclude collateral attack of this juvenile
9 adjudication. I assume you're not going to put any
10 information on about the fact that Mr. Blair was adjudicated,
11 juvenile delinquent. Is that fair to say?

12 MR. STILLEY: Your Honor, the way this case stands I
13 think that all should be just kept out. It's irrelevant. It
14 doesn't --

15 THE COURT: Fine, okay. That motion will be then
16 denied as moot.

17 Now, you know, a whole lot of claims that were
18 brought have been ruled on in some fashion or another or
19 excluded. But in any event, I guess in a display of caution
20 Mr. Oliver has filed motions to preclude irrelevant and
21 immaterial evidence. And among those -- among the many, that
22 the defendants engaged in a conspiracy to deprive Mr. Blair
23 of his constitutional rights. Are we going to have any of
24 that, Mr. Stilley? I'm just going to go down. It's like 19
25 of these things.

1 MR. STILLEY: Your Honor, what I would -- if I was
2 left on my devices what I would do is to allow the witness to
3 testify that he wanted to contact law enforcement and was not
4 allowed to do that.

5 THE COURT: What has that got to do with anything?

6 MR. STILLEY: The best --

7 THE COURT: We got two issues here, you know, the
8 Fair Labor Standards Act violation and this battery.

9 MR. STILLEY: Well, I think the best that would go
10 to is that he was kept there and kept without ability to
11 communicate and prevented to leave so that he wouldn't have
12 to work there. If he had been able to --

13 THE COURT: Mr. Oliver.

14 MR. OLIVER: That's a false imprisonment claim, Your
15 Honor. You've already ruled on that.

16 THE COURT: Yeah, I think you want to keep those
17 claims in that I already ruled on. You know, when you think
18 about the Fair Labor Standards Act, we're talking about the
19 employer/employee relationship and the hours, kind of work,
20 that kind of thing. The battery is this as you all
21 various -- this shoving or pushing or whatever, so we got
22 those two things. That's all we got. That's all that's left
23 here. So how does the fact that he -- part of what you're
24 saying, that he wasn't allowed to leave have to do with
25 either one of those?

1 MR. STILLEY: That helps prove he didn't volunteer
2 -- it's not just volunteered work. He was compelled --

3 THE COURT: This is as Mr. Oliver said, this not a
4 false imprisonment claim.

5 MR. STILLEY: That's true. That's true.

6 THE COURT: Well, you know, there's several things.
7 I heard Charles Barkley say the other day that work is not
8 all it's cracked up to be. And these people are talking
9 about essential employees. The graveyard is full of them.
10 So what I'm trying to say there is this is not about forcing
11 somebody to work, this is just whether or not he was an
12 employee. Not whether or not he was forced to stay there.
13 That's gone. That claim is gone.

14 MR. STILLEY: I understand. I'm trying to --

15 THE COURT: Fine, we got to move on. So I'm
16 granting as far as that is concerned.

17 Bounty hunter service, that's granted. We're not
18 getting into that.

19 Affiliation of the defendants Mountain Park and Palm
20 Lane with facilities outside the United States. What has
21 that got to do with anything? That's excluded also.

22 Their lock-down facilities, that's excluded.

23 Contract status. We may need that. There is an
24 employer/employee relationship, who was the employer, is it a
25 corporation or is it some individuals? What about that,

1 Mr. Stilley?

2 MR. OLIVER: Your Honor, we agree with you.

3 THE COURT: Okay, fine. No problem, that's denied.

4 Did you miss anything to exclude, Mr. Oliver? They
5 engaged in brainwashing. Okay, that's granted.

6 Deprived Mr. Blair of access to legal counsel.
7 That's granted.

8 Tell me when you have one that you wish to really
9 challenge, Mr. Stilley.

10 Deprived Mr. Blair of access to appeal regarding his
11 adjudication of delinquency. That's granted.

12 Deprived Mr. Blair of his due process rights.
13 Granted.

14 Engaged in acts of cruel and unusual punishment.
15 Granted.

16 MR. STILLEY: Your Honor, now, on that I'd like to
17 address that.

18 THE COURT: Fine.

19 MR. STILLEY: I want to let the jury know actually
20 the conditions he worked in. I think that's only fair. Does
21 that sound reasonable to you?

22 THE COURT: No.

23 MR. STILLEY: Certainly the hours.

24 THE COURT: This is not about the terms and
25 conditions of his employment in terms of the cleanliness,

1 badness, whatever of that atmosphere. We're really more in
2 terms of the relationship, the hours, the kind of work that
3 was done, whether or not, you know, the defendants were a
4 commercial enterprise. So I don't understand what you are
5 talking about.

6 MR. STILLEY: Well, I mean, the totality of the
7 circumstances is the important issue here. And what I'm
8 trying to do is to show the jury actually what he was doing
9 and the conditions of that. Because the defendants are
10 saying, well, we were just trying to do this to help him.
11 And the plaintiff is saying, no, you were doing it to try to
12 make money.

13 THE COURT: That's what my mother used to tell me
14 people. You know, in my day, my mother -- when the boys
15 acted bad, she'd put their chair up against the wall, and
16 you'd have to get up under there and she'd take that iron
17 cord and she told me she was doing it for my own good.
18 That's what they said. Now go ahead.

19 MR. STILLEY: I think that is fair. And I'd like
20 the Court to rule on that. I think the Court should say,
21 yes, you can show the true facts of how he was worked because
22 there's a difference between somebody --

23 THE COURT: Well, I'll tell you what, in terms of
24 describing the kind of work he did, fine. But in terms of
25 trying to ask the jury be sympathetic because he was

1 mistreated, no. You understand?

2 MR. STILLEY: I understand.

3 THE COURT: But don't try to sneak across the line,
4 you know, because the whistle will be blown. And you have
5 been told here. And this is the way it works with me. Do
6 not think I'm going to call you up here to the bench to tell
7 you that you just didn't understand this when you should have
8 been inside the line. I'm going to let you know right there
9 in front of that jury, okay.

10 MR. STILLEY: Certainly.

11 THE COURT: So everybody understands as I told you
12 already, can't waste time here, we got to move this show on.

13 MR. STILLEY: Certainly. Since we're on this
14 issue --

15 THE COURT: So I'm granting this. In terms of cruel
16 and unusual punishment, that's excluded. You're not here --
17 we're talking about violation of Fair Labor Standards Act and
18 a battery, not any cruel and unusual punishment. That's just
19 the sympathy ploy you're playing, you know. So you got to
20 stay away from that.

21 MR. STILLEY: Well, there's some related issues
22 here.

23 THE COURT: I know there are.

24 MR. STILLEY: Well, I'll let you take up in the
25 order. And if we still got any left --

1 THE COURT: Fine. What about references to other
2 students or acts inflicted upon them, students. Other
3 students by defendants. What about that?

4 MR. STILLEY: Your Honor, I think that that would be
5 proper to show intimidation to compel him to continue to
6 work.

7 THE COURT: Well, you know, this is about the fact,
8 did he work, what did he do when he worked. Again, you're on
9 this false imprisonment situation. That's granted.

10 MR. STILLEY: Now, let me make sure I understand
11 this. For example, where this other boy was forced to
12 continue to run until he urinated and defecated in his pants,
13 is he prohibited from mentioning anything about that?

14 THE COURT: Oh, absolutely. What has that got to do
15 with this?

16 MR. STILLEY: Well, that's --

17 THE COURT: That is understandably something that
18 does not clearly appear to be appropriate for it to occur,
19 but that is not what this case is about. That's the problem.
20 And the problem is this, I let all this stuff in, then the
21 Court of Appeals gets to beating me around for letting all
22 this stuff in that I shouldn't let in. I'm trying to keep
23 the record clean. Can't have all this stuff you're trying to
24 throw up against the wall. See, you need to think about how
25 does this show a violation of the Fair Labor Standards Act or

1 how does it tend to show that this battery occurred. If it
2 doesn't tend to show that, it may sound good, it may show
3 from your perspective that the defendants are bad people, but
4 that's not this case. It's simple as that. That's not this
5 case.

6 MR. STILLEY: Can I make a run at trying to explain
7 why that is part of this case?

8 THE COURT: Go for it.

9 MR. STILLEY: Okay. One of his jobs was a security
10 guard. He was compelled to act as an unpaid security guard.
11 And the reason that this boy who was running in the woods,
12 the reason that he didn't run in the woods and go to the
13 bathroom is that everybody, including the plaintiff was under
14 strict orders if he gets more than slapping distance away
15 from his personal security guard, you all have to attack him.
16 So that was part of his job duties. And that's --

17 THE COURT: So he did that. He ran after the
18 person?

19 MR. STILLEY: He didn't have to do that, but that is
20 why the kid -- and he was on duty, then he had to watch to
21 make sure this kid didn't run over the hill. If he had not
22 had these orders in an ordinary circumstance as he was
23 running on, he'd say go to the bathroom.

24 THE COURT: You can hear him tell about his duties,
25 then you want to get to what happened to this other person

1 because of some general duties. Fine. We're talking about
2 his duties, what he had to do as a job.

3 MR. STILLEY: Well --

4 THE COURT: Not what happened to other people.

5 MR. STILLEY: Well, certainly he should be allowed
6 to say that he was required to act as an unpaid security
7 guard.

8 THE COURT: He can tell what his job duties were,
9 what he did.

10 MR. STILLEY: Can he explain how he had to behave
11 with relation to the other kids as part of those job duties?

12 THE COURT: Is that part of his job? Was that part
13 of his job duties?

14 MR. STILLEY: Yes, Your Honor, it was.

15 THE COURT: Well, we'll see. Okay.

16 MR. STILLEY: So are we still open on that? Can we
17 just take that as it comes in?

18 THE COURT: Don't go too far with that. Don't go
19 too far. You know, when I was a kid, the guys would wrestle
20 in the neighborhood, the big guys would take their knuckle
21 and put it to your head and you'd either have to say mama or
22 I give. Don't bring us to that, please. Okay. You just
23 keep stretching.

24 MR. STILLEY: Your Honor, I want a fair presentation
25 of the evidence.

1 THE COURT: We all want a fair presentation. And I
2 understand your concerns. But that what you're talking about
3 in a great deal is not a part of this case. You know, as
4 they say, I feel your pain. But that isn't part of this
5 case.

6 MR. STILLEY: His duties as a security guard --

7 THE COURT: His duties. What did he have to do as
8 part of his job.

9 MR. STILLEY: Okay. And can I ask him then what did
10 this require you to do in relation to specific students?

11 THE COURT: Well, you want to get to somebody
12 urinating in their pants and defecating in their pants. I
13 mean, please. That isn't part of his job to make somebody do
14 that, okay.

15 MR. STILLEY: Actually it was, Your Honor.

16 THE COURT: Oh, please.

17 MR. STILLEY: It was.

18 THE COURT: To make somebody urinate or defecate in
19 their pants?

20 MR. STILLEY: Yes. If he had --

21 THE COURT: Well, you better present me some
22 evidence that that was part of his duties. That's a hard job
23 to get done it would seem to me.

24 MR. STILLEY: Your Honor, that's their rules.

25 THE COURT: Fine. Let me tell you something. You

1 are an officer of this court. You want me to accept what
2 you're saying is true so that when you do something, I accept
3 what you're saying.

4 MR. STILLEY: Correct.

5 THE COURT: You seem to be stretching things, okay.

6 MR. STILLEY: Your Honor --

7 THE COURT: I can't see -- I just don't see that,
8 that that's your job duty, to make somebody urinate and
9 defecate in their pants. I just don't see that as a specific
10 job duty. Fine. I don't want to discuss that any further.
11 You just present your testimony about the job duties.

12 Defendants using or retaining people with firearms
13 there at Mountain Park and Palm Lane. That's excluded.

14 MR. STILLEY: Your Honor, can I make a statement?

15 THE COURT: Go ahead.

16 MR. STILLEY: He was forced to throw the bottles
17 from the shootout.

18 THE COURT: That was one of his jobs?

19 MR. STILLEY: Yes.

20 THE COURT: Well, it seems like you may have to put
21 that in. But, see, the problem that it seems to me is that
22 you want to continue to emphasize that this was a prison,
23 that the plaintiff was falsely imprisoned. And I keep
24 telling you that that's not part of this case. So if part of
25 his duties were throwing bottles for guards or whatever so

1 they could shoot at, then that's his job duty.

2 MR. STILLEY: Right.

3 THE COURT: But the part that you seem to want to go
4 to, false imprisonment, is not part of the case.

5 MR. STILLEY: I understand there's just two claims
6 and that's all I'm trying to present evidence.

7 THE COURT: If you don't understand, I'm going to
8 help you a little later on.

9 MR. STILLEY: Certainly.

10 THE COURT: You know, you hear that story Cool Hand
11 Luke about a failure to communicate?

12 MR. STILLEY: I don't guess I remember that. We
13 didn't have TV when I was growing up.

14 THE COURT: Well, it is one of the famous lines in
15 movies. And, you know, when the prison warden was explaining
16 about someone's failure to communicate, he had a method of
17 communicating. I don't intend to employ that method, but
18 there's ways to get one's message across.

19 Other lawsuits. Other lawsuits, you want to bring
20 up other lawsuits? Other boarding schools?

21 MR. STILLEY: I don't anticipate bringing up any
22 lawsuit or other -- well, I don't need to bring up other
23 boarding schools.

24 THE COURT: Denial of bathroom privileges.

25 MR. STILLEY: Your Honor, I think that that has to

1 be part of it.

2 THE COURT: Why?

3 MR. STILLEY: That is part of his --

4 THE COURT: That was one of his job duties?

5 MR. STILLEY: As I explained to you, one of his job
6 duties was that he was to attack any kid who ran away or got
7 out of line.

8 THE COURT: I'm talking about denial of bathroom
9 duties for the plaintiff. That is what defendants have asked
10 to exclude, any reference to that.

11 MR. STILLEY: Well, the jury might think that he got
12 bathroom breaks, and we need to take off time for bathroom
13 breaks. I think we need to show that he rarely got bathroom
14 breaks and they were very short.

15 THE COURT: Fine. If that's relative to his hours
16 of work, then fine. But not to show any cruel or unusual
17 punishment, okay.

18 MR. STILLEY: I understand.

19 THE COURT: Okay. The hours, the hours of work
20 only.

21 MR. OLIVER: Your Honor, may it please the Court.
22 In that regard the law is very clear, 29 CFR 785.22, I mean,
23 assuming you have an employer/employee relationship, which we
24 obviously don't agree to, but the United States Department of
25 Labor and the regulations 29 CFR 785.22325 require that

1 bathroom breaks be counted as part of the hours worked, so
2 there's no reason to discuss or go into bathroom breaks at
3 all because they are included in the start to stop time,
4 finish.

5 THE COURT: What about that, Mr. Stilley? That
6 seems to be the case.

7 MR. STILLEY: Just the typical day, if I just say
8 Mr. Blair explain to us what's a typical day like. Tell us
9 what you did when you got up. That's going to be part of it.
10 I need to show that to show the totality of the issues which
11 you in your order said was proper in a Fair Labor Standards
12 case.

13 THE COURT: Yeah, in terms of what he did for his
14 day. But what I was saying was that -- what I initially said
15 was you should show this in terms of hours of work. And
16 Mr. Oliver is correct in terms of that, you know, that is to
17 be counted, bathroom time is to be counted. So it's really
18 not a consideration in terms of hours of work. Because
19 whether you do or not do that, it's not a consideration in
20 terms of your hours of work. So what would it be for then?
21 What are we putting it in evidence for? Why is it in
22 evidence? That's the question.

23 MR. STILLEY: In order for the jury to understand
24 the totality of the circumstances.

25 THE COURT: What totality is that?

1 MR. STILLEY: Well, is this work for the benefit of
2 Mountain Park and the defendants or is it something that's
3 just to help these kids learn things. And when you go
4 through the day, unless you just artificially exclude that,
5 you have to show how much time he got for various tasks and
6 how much time he got for his own personal use for various
7 things and what the circumstances were of the work that he
8 did. Because there's a dispute between the plaintiff and the
9 defendant about what the character of this work is. They say
10 it's not compensable. My client said, yes, you were working
11 me for your benefit and you have to pay me for it.

12 THE COURT: Well, I'm just wondering the degree to
13 which you are or are not allowed rest room privileges, does
14 that make it an employer/employee relationship? I mean, does
15 it tend to show one or the other?

16 MR. STILLEY: Certainly it does. It certainly does
17 because it shows that there's not humanitarian concern for
18 these kids and desire -- it's to teach them how to do things.
19 It's desire to make them work every minute they can possibly
20 get them to work. And that's what happened, and that's what
21 the evidence is going to show.

22 THE COURT: Mr. Oliver.

23 MR. OLIVER: You know, Judge, that's why we have
24 Rule 404(b) to exclude these kind of things and 403, that's
25 why these rules of evidence exist so that we don't have to

1 have all these mini trials throughout this trial over issues
2 that are not probative. The question here as this court has
3 already ruled is whether or not Blair's activities are part
4 of the school or part of the business enterprise. And, you
5 know, whether he had 30 or 45 seconds or five hours to go to
6 the bathroom is irrelevant to those decisions. Justly the
7 confusion Mr. Stilley when he used the word humanitarian in
8 essence admits that he intends a trial on what the Court has
9 drawn a line in the sand about trying to show that this is
10 some inhumane operation. And that's why we have Rule 403.

11 THE COURT: Fine, I'm excluding that. You hit it on
12 the head when you're talking about humanitarian. This is not
13 about that. This is about employee/employer relationship
14 here, whether or not that relationship existed.

15 MR. STILLEY: Your Honor, let me make sure I
16 understand the scope of this ruling then. Is he prohibited
17 from telling the jury about the typical day in his life?

18 THE COURT: I didn't say that. We're talking about
19 the denial of bathroom privileges, okay.

20 MR. STILLEY: Can he just say the facts of what was
21 done to him?

22 THE COURT: You just continue to make it appear to
23 me that you want to continue to try to sneak across the line,
24 that's what you keep telling me. Judge, you give me an
25 opening so I can sneak across the line.

1 MR. STILLEY: Your Honor, I don't want to sneak up
2 to the line, I want to go right up to it and stop.

3 THE COURT: You may be acting at your peril, okay.
4 I have ruled on this denial of bath room privileges.

5 MR. STILLEY: Okay. Well, I want to know the scope
6 of it.

7 THE COURT: That is the scope of it.

8 MR. STILLEY: Well, now let me ask you this: If I
9 just ask him --

10 THE COURT: When you ask me this, I'm going to tell
11 you that. Go ahead.

12 MR. STILLEY: If I just ask him to tell the jury
13 what he did during the typical day, and he goes through this
14 and he says how much time that he got to go to the bathroom,
15 is that going to be a violation of your order?

16 THE COURT: Yes.

17 MR. STILLEY: So he has --

18 THE COURT: That isn't what he did. That isn't what
19 he did. That's what he didn't do. That's what you're
20 telling me, that's what he didn't do.

21 MR. STILLEY: No, he did go to the bathroom, but he
22 just didn't get very much time.

23 THE COURT: Fine. Fine, the time is not relevant.

24 MR. STILLEY: Well, Judge, you told me that the
25 totality of the circumstances.

1 THE COURT: See, you're still the Cool Hand Luke,
2 where somebody is over this, shake the weeds, boss, we got
3 the string on him when he goes to the bathroom. Please.
4 False imprisonment. You keep going there. You keep going
5 there in terms of the violation. And, you know, as they say,
6 I feel your pain. I understand what you're saying. But this
7 is not part of that case. That is out. You still want to
8 try the part of the case that has disappeared.

9 MR. STILLEY: Well, when I ask him about that, do I
10 just have to explain to him when he talked about --

11 THE COURT: He's sitting there. Please. We will
12 have recesses. I don't need any further discussion of that.
13 You've been told.

14 Escaping from Palm Lane?

15 MR. STILLEY: Your Honor, they said that themselves.
16 That's the way they describe it. They say in their
17 pleadings --

18 THE COURT: Well, folks say a lot of things. How is
19 that coming in in terms of the employment or the battery?

20 MR. STILLEY: Well, that would show when he was
21 terminated. If they don't want to show he was terminated, if
22 they want to continue to the present I don't guess I have a
23 objection to that.

24 THE COURT: He ran away at some point in time, and
25 that's when he stopped working.

1 MR. STILLEY: That's right, he escaped, ran away,
2 same thing.

3 THE COURT: Well, temper that. Temper that. He ran
4 away.

5 MR. STILLEY: Okay.

6 THE COURT: Okay. Okay, that's denied. We'll hear
7 about that as far as his termination of the relationship,
8 whether that was employment or scholastic.

9 This adjudication, the delinquency adjudication.
10 That's granted. That's out.

11 MR. STILLEY: I take it that nothing is going to be
12 mentioned by either party, nobody is going to say anything
13 about adjudication, correct?

14 THE COURT: Not to the substance of it, not to the
15 merits of it. I mean, I don't know if your client is going
16 to talk about how he got to Mountain Park in the first place,
17 I don't know that.

18 MR. STILLEY: Well, the issues that we have, I think
19 the whole thing needs to stay out if you can't explain.

20 THE COURT: Fine, I don't have a problem with that.
21 Is that all right with you, Mr. Oliver?

22 MR. BRIGGS: I'm sorry, I don't think I understand.

23 THE COURT: He wants to exclude any mention of
24 juvenile delinquency on the part of Mr. Blair.

25 MR. BRIGGS: We've comfortable with allowing --

1 we're comfortable with explaining that the parents enrolled
2 him without making reference to the exact cause.

3 THE COURT: Okay. How about that, Mr. Stilley?

4 MR. OLIVER: I'm sure Mr. Blair will describe his
5 son as troubled. I think we can leave it at that. We take
6 trouble children; we don't take normal children.

7 THE COURT: Fine, I think we have an understanding.

8 MR. STILLEY: Your Honor, that is satisfactory to
9 me. We may have to keep out just a little bit of the
10 deposition testimony on that account, but I'll get with
11 opposing counsel on that.

12 THE COURT: Depravation and denial of sleep. What
13 about that?

14 MR. STILLEY: That goes to his hours. He was forced
15 to work all of his waking hours and only got a limited amount
16 of sleep a night, so I think that would show how many hours
17 he worked. Many times he would work --

18 THE COURT: Fine. You're going to show this is for
19 hours of work, and not for depravation of sleep?

20 MR. STILLEY: Right.

21 THE COURT: Correct.

22 MR. STILLEY: Correct.

23 THE COURT: Denial of, depravation of medicine?

24 MR. STILLEY: Your Honor, I think that that is very
25 appropriate because he's out there working, he's asking for

1 medicine. And his letters show that he's asking for
2 medicine. I need some medicine and they won't give it to
3 him.

4 THE COURT: Okay.

5 MR. STILLEY: And they are saying --

6 THE COURT: I understand. How many times do you
7 want me to say I feel your pain. What has that got to do
8 with the two questions in this case, employment and battery?

9 MR. STILLEY: Well, if the defendant --

10 THE COURT: That's what you got to tell me. Don't
11 tell me this happened that bad, that bad. So it's a lot of
12 bad stuff happening in this world. The devil is busy. So
13 what. I can't solve every problem. I'm trying to deal with
14 Fair Labor Standards Act and battery. Those are my two
15 problems.

16 MR. STILLEY: Your Honor, this would go for one
17 thing to the totality of the circumstances. As long as the
18 defendants want to make out that this is something other than
19 an employment relationship, it's something that they are just
20 teaching the kids how to be good adults, I think we need to
21 show that the facts of what's going on, otherwise the jury
22 gets a misapprehension.

23 THE COURT: That's granted. That's out. You
24 haven't told me anything about employment or battery.

25 Depravation of proper educational materials. What

1 about that, Mr. Stilley?

2 MR. STILLEY: Goes to his hours because they didn't
3 let him do any work that was age or grade appropriate. And
4 the rule on Fair Labor Standards Act say if you're compelled
5 to go to a meeting just on the basis that you're compelled to
6 go to a meeting by your employer is compensable. What we
7 want to say, he had his high school diploma. He had
8 completed that. And despite that, he was sent to Palm Lane
9 on the same day he got this high school diploma and forced to
10 work there. So his educational background would be
11 appropriate.

12 MR. OLIVER: It's a lay opinion.

13 THE COURT: We're talking about depravation of
14 proper educational materials.

15 MR. OLIVER: That's lay opinion as to what's proper.
16 He's trying to substitute a judgment of -- judgment of
17 Christian educators. We don't have to go into -- the fact is
18 he had the opportunity to have an education. Now, what level
19 is totally irrelevant. And particularly when he offers no
20 expert evidence to indicate that the diagnostic testing that
21 we gave him was improper.

22 Your Honor, if I might, I've just about had enough
23 of Mr. Stilley's statements this morning. This is going to
24 be a problem throughout this trial, and I apologize in
25 advance. Mr. Stilley just told the Court that on November

1 the 10th that his client had his diploma, and that's a
2 misstatement of fact. And it's not unlike the misstatement
3 of fact he made to Judge Dawson in this case when Judge
4 Dawson wrote that although plaintiff and plaintiff's counsel
5 deny the warrant of an outstanding arrest, they made that
6 denial in the filing of Western District of Arkansas December
7 17th, 2003 after they made affidavits before this court a
8 year before that they knew about the warrant. Mr. Stilley
9 has a habit at least in front of Judge Dawson, your
10 counterpart in Arkansas, of making statements that are
11 demonstrably not true. This education thing, Your Honor,
12 there was -- the diploma was, in fact, in a file in another
13 school. That principal told us that Jordan was never
14 eligible for that diploma. Later he gave that diploma to
15 Mr. Stilley. We never had the diploma. And it has nothing
16 to do with what Mountain Park is. We're going to have to
17 have a mini trial, bring in the principal and find out
18 whether Mr. Stilley and his group threatened principal Womack
19 with a suit if they didn't give the diploma. You can listen
20 to the tape, Your Honor. Mr. Stilley gave --

21 THE COURT: No, it looks like I'm going to have to
22 listen to more than I want to already.

23 MR. OLIVER: Absolutely. I didn't want to get
24 there, but enough is enough. Enough is enough.

25 THE COURT: Let's bury this and move on.

1 MR. STILLEY: At this point in time they are asking
2 for an offset for the value of what they provided to him. I
3 think it is relevant to the value what they provided to him.
4 They did find my client didn't have physical possession of
5 that diploma on the 10th of November, that's correct, because
6 I couldn't go anywhere. He couldn't communicate with the
7 outside world.

8 THE COURT: This sounds like something that may be a
9 rebuttal matter. Is that correct?

10 MR. STILLEY: Well, I wanted to just present
11 testimony in my case in chief about what his educational
12 background -- I mean, what educational achievements have you
13 made and when did you make those achievements.

14 THE COURT: I don't see that as problematic, but I'm
15 talking about the initial thing that I was referring to was
16 Mr. Oliver -- the defendants' motion for you to put on
17 evidence of the denial of proper educational materials, you
18 know, books, paper, pencil, whatever. Educational materials.

19 MR. STILLEY: What I'd like to do --

20 THE COURT: That's out. What? Tell me about that.

21 MR. STILLEY: What I want to just do, put on the
22 facts that he was put in fifth grade level work. Is that
23 fair?

24 MR. OLIVER: That's not fair because it isn't true.

25 THE COURT: How is that relevant?

1 MR. STILLEY: Well, on one hand they are saying we
2 want to offset to your wages for what the value --

3 THE COURT: I'll tell you what, you know, we've got
4 a situation as to whether or not it's student or employee,
5 so, you know, there is some kind of balance there in terms of
6 what he was doing of an educational nature or was it an
7 employee situation. But the idea of it being cruel or
8 unusual or punitive in some kind of way is not appropriate.
9 But whatever shows that it's more likely education or more
10 likely employment, those kinds, that's relevant.

11 MR. STILLEY: That's all I want to put on.

12 THE COURT: Anything on that, Mr. Oliver?

13 MR. OLIVER: If you want an education in the school,
14 the philosophy and testing procedures of the School of
15 Tomorrow, I guess not, but you just added about a day of
16 explanation, unnecessary explanation to the trial. The point
17 is --

18 THE COURT: No, it wouldn't be a day. It don't take
19 somebody long to tell what their philosophy, what their
20 educational approach is. That's that. I mean, I understand
21 this is an alternative education, but it won't take that long
22 to explain it.

23 MR. OLIVER: Yes, sir. The only issue is whether he
24 was in school or at work, not what he was doing.

25 THE COURT: You know, part of it he's going to be

1 talking about what he's doing is work. Somebody is going to
2 talk about education. So we got to talk about what he is
3 doing.

4 MR. OLIVER: Yes, sir.

5 THE COURT: So I'm talking about something as simple
6 in that regard. It's not something for sympathy that he was
7 being mistreated or something of that nature. So I'm going
8 to grant that motion as far as educational materials is
9 concerned, but allow evidence as to education versus
10 employment activities.

11 Okay. We already got to this diploma situation.
12 What about that? You say, Mr. Stilley, that that's just to
13 show what he got because there is a claim on the part of
14 defendants for payment as to his education. Tell me about
15 that.

16 MR. STILLEY: Yes, that is one thing. And the other
17 thing is that mitigates against being a student if he already
18 got a high school diploma. So the student versus employee
19 dichotomy is the -- I think the key issue that we need to
20 show, he's got a high school diploma.

21 MR. OLIVER: Your Honor, first of all, he doesn't
22 have any evidence that we had it, because we didn't have it.
23 If we had it, maybe that would be relevant. The fact that
24 this boy claimed it and we got it in discovery sort of
25 militates against this having any probative value whatsoever.

1 I mean, in the handbook we specifically tell these parents
2 that enroll their students that they are going to continue to
3 get courses including post graduate or post high school
4 courses, and we continue to provide education, whatever
5 level. There's a minimum one-year requirement. Whether they
6 are eligible for graduation someplace else within that year
7 or not is irrelevant to us and to the parents that enroll
8 them because we indicate that we'll continue to provide
9 appropriate level courses during that one-year period of
10 time.

11 The fact that some other school at some time after
12 this lawsuit handed him a diploma is irrelevant to what
13 happens at Mountain Park or actually at Palm Lane. He was
14 only at Mountain Park 17 days.

15 THE COURT: Mr. Stilley.

16 MR. STILLEY: Your Honor, I think that I should be
17 allowed to interrogate the witness about this on the stand
18 because it's -- you can't --

19 THE COURT: That's why we're having this hearing.
20 We're trying to find out this now. See, you want to put out
21 all this sympathy business for the jury. And once they've
22 heard it, I can't unring that bell. That's why I'm trying to
23 see if this dog will hunt right now. If the dog can't hunt,
24 I got to tell you to keep it up on the porch. You see?

25 MR. STILLEY: Sure.

1 THE COURT: That's what we're here for, to see if
2 your dog hunts. See which one of these dogs will do
3 something here.

4 MR. STILLEY: My dog will hunt.

5 THE COURT: That's what you say, but I'm going to be
6 the judge of that. Now, let's talk about this a little more.

7 MR. STILLEY: Okay.

8 THE COURT: How old was Mr. Blair when he first went
9 to Mountain Park?

10 MR. STILLEY: He was almost 17. He was 16 years
11 old.

12 THE COURT: Okay. And so he got a diploma from the
13 school from which he left?

14 MR. STILLEY: Correct.

15 THE COURT: What grade was he in when he left?

16 MR. STILLEY: He had already completed all
17 requirements for graduation. And this was an ACE school,
18 accelerated Christian education school, same as Mountain
19 Park. So he had completed all requirements for graduation.
20 And let me explain this. I think it's probably fairly
21 obvious you can't complete all requirements for graduation
22 without knowing that. And if you go somewhere else, you're
23 going to try to explain to the new school, here's what I
24 completed, I don't need to go back.

25 THE COURT: Fine. But you got a situation where his

1 parents sent him here. So now what does this tend to show,
2 that, in fact, that unless you can tell me otherwise what you
3 are seeming to suggest to me is that Mr. Blair had completed
4 all his requirements to complete high school but did not have
5 a high school diploma, and you find out later on that he did
6 have a high school diploma and so here we are. So now what
7 does this tend to show in terms of employment status, student
8 status versus student status or battery? What does it tend
9 to show there? How does it tend to prove one of those things
10 are more likely one way or the other way?

11 MR. STILLEY: Well, let's start with what Mountain
12 Park says about their facility. They say it is an academy.
13 Mountain Park Baptist Boarding Academy, and it is nothing
14 more than the name implies. And when you have a diploma, you
15 got a demonstration, certification that this person has
16 completed secondary education. They've completed high
17 school. There is no need for them to be a student. So the
18 logical --

19 THE COURT: Wait a minute, who made the
20 determination for Mr. Blair to be there in the first place?

21 MR. STILLEY: The parents.

22 THE COURT: Now, you're trying to put this decision
23 making on the defendants, that they made a determination of
24 him being there. That wasn't the case. That's what you're
25 telling me. So I'm trying to see how is this relevant. You

1 seem to be suggesting somewhere in this student employee
2 situation that it's relevant, and I'm trying to figure out
3 how is it relevant. I don't see it yet.

4 MR. STILLEY: Well, let's look at it in this way.
5 If an individual -- let's say nobody had sent him there, he
6 just showed up there.

7 THE COURT: Well, he didn't show up there.

8 MR. STILLEY: Well, I understand that.

9 THE COURT: That didn't happen.

10 MR. STILLEY: A person who has a high school diploma
11 is more likely -- when they are forced to do work, it's more
12 like a work situation than educational situation, especially
13 when the facility says we don't do anything but secondary
14 education, 9 through 12. That's all their business is. And
15 when that has been completed --

16 THE COURT: I'm excluding that. That's that.

17 MR. STILLEY: Are you excluding evidence that he had
18 a high school diploma?

19 THE COURT: Yes, I'm excluding that unless it's in
20 rebuttal unless it has something to do relative to what the
21 defendants put on because that has nothing to do with how he
22 got there, and you're telling me it had something to do with
23 the level of work that he could get otherwise. We got people
24 with Harvard law degrees working as greeters at Wal-Marts in
25 St. Louis, please.

1 MR. STILLEY: They're still entitled to minimum
2 wage. They are entitled to a minimum wage. And that's all
3 he's asking for is minimum wage and overtime.

4 THE COURT: Fine. What has this got to do with
5 whether or not he is entitled to minimum wage?

6 MR. STILLEY: It militates in favor of the employee
7 relationship instead of student relationship. Suppose the
8 defendants can show he was just in fifth grade level work, he
9 needed to be educated. That makes it look like he's a
10 student.

11 THE COURT: We don't want to get into whether or not
12 he just got these social promotions. I don't know what his
13 educational level is.

14 MR. STILLEY: Well, it's not about social promotion.
15 It is about whether or not he had a high school diploma,
16 whether or not he had completed requirements of high school
17 education. And that militates very much against a student
18 status or a status of just the defendants were just trying to
19 teach him things about work. It's not teaching about work,
20 it's making him work. It's making him work at their
21 enterprises. And I think it would be just very unfair not to
22 allow him to show he had completed all requirements of
23 graduation and was awarded a diploma dated November 10th.

24 THE COURT: It seems to me neither you nor he knew
25 he had been awarded a diploma until some time later.

1 MR. STILLEY: Your Honor, he certainly knew.

2 THE COURT: It seems that neither you nor he knew he
3 had a diploma until sometime later. Is that correct?

4 MR. STILLEY: No, he knew he had completed the
5 requirements.

6 THE COURT: I didn't ask you that. I asked you, did
7 you or he knew he had a diploma at that time? I didn't ask
8 you about completed requirements. Don't try to change the
9 song and dance, you know.

10 MR. STILLEY: That he knew?

11 THE COURT: A diploma.

12 MR. STILLEY: On what date? On the 10th of
13 November?

14 THE COURT: When he started Mountain Park.

15 MR. STILLEY: It had not been awarded at that point
16 in time.

17 THE COURT: It's out. Excluded.

18 Well, his work as security guard there. I guess
19 you're going to talk about his work, so that's that. That's
20 denied.

21 MR. STILLEY: I beg your pardon?

22 THE COURT: That will be in. The motion was to
23 exclude it, so he'll be able to talk about his work, which is
24 part of his work is a security guard as you already
25 mentioned. That's fine.

1 What about all these deposition excerpts? I mean,
2 well, first of all, we can deal with plaintiff's. Why do we
3 need to deal with plaintiff's depositions other than in terms
4 of cross-examination or something?

5 MR. OLIVER: I'm afraid I'm not following Your
6 Honor. Parts of plaintiff's deposition are admissible. They
7 are not hearsay, they are admissions under Rule 803(d).
8 Anything he says we can introduce. I mean, obviously we're
9 not going to use everything that we had because the Court has
10 correctly narrowed the scope of the trial, so we'll be
11 pairing our stuff down tremendously.

12 THE COURT: You want to file a motion to exclude
13 these references to designated deposition excerpts, and maybe
14 we're going to have to wait until that time, because we're
15 not going to keep going over ground that's been tread. If
16 it's rebuttal or whatever.

17 MR. STILLEY: Your Honor, I have no problem with
18 them using it for impeachment. I think they need to get the
19 testimony from the witness stand. If they don't like the
20 questions, they can come back in their case and get the
21 questions answered straight from him. I don't think it's
22 necessary or appropriate.

23 THE COURT: I don't see repeating the same testimony
24 as to what he said. What's the point?

25 MR. OLIVER: There isn't any, and it won't happen.

1 THE COURT: So anything you're going to put on in
2 terms of a deposition testimony of Mr. Blair would be
3 something where he said something different or something
4 partially different?

5 MR. OLIVER: Absolutely, Your Honor. We won't offer
6 anything -- we don't need to prove it twice.

7 THE COURT: I'm trying to tell you.

8 MR. OLIVER: And we do not intend to try to. We
9 just listed things out of abundance of caution so nobody is
10 surprised.

11 THE COURT: Fine. This will be denied as moot. We
12 have an understanding here. Oh, deposition testimony of Ron
13 Blair. I don't think Mr. Blair -- will there be any
14 testimony in reference to Mr. Blair?

15 MR. STILLEY: To Ron Blair?

16 THE COURT: Yes.

17 MR. STILLEY: I had made an objection to part of
18 that because it was just every question was leading at the
19 deposition. I know that theory is that they can put this
20 testimony in because he's unavailable, he's more than a
21 hundred miles away, but the testimony that I objected to was
22 just --

23 THE COURT: Well, I don't think he's testifying. Is
24 there going to be any testimony from Mr. Blair?

25 MR. OLIVER: By deposition at least, Your Honor.

1 THE COURT: For what purpose? I mean, I don't
2 understand why we're going to have testimony at all from
3 Mr. Ron Blair.

4 MR. OLIVER: Because the question and answer is the
5 opinion that the boy can't be believed, that he's untruthful.
6 It's character attack, Your Honor, no ifs, ands, and buts
7 about it.

8 MR. STILLEY: Judge, I think on the basis of your
9 rulings, I think that needs to be kept out. We went through
10 and took out a great number of things that perhaps one side
11 or other would have liked to talk about that is improper.
12 And the good part of this testimony is Mr. Oliver making
13 statements and every once in a while Mr. Blair says yes.

14 MR. OLIVER: That's exactly what Rule 611(c) says
15 you do in cross-examination, Your Honor.

16 THE COURT: I'll tell you what, I'll take this under
17 advisement. You all get 611(c) and also the character
18 witness testimony so we can look at it in light of those two
19 issues, okay.

20 MR. OLIVER: It's 608, Your Honor, if my memory
21 serves me correct.

22 THE COURT: Okay. We'll look at it in terms of
23 those two things.

24 MR. STILLEY: Judge, on Jordan's deposition
25 testimony, some of this relates -- refers to prohibited

1 matters such as the adjudication in Crawford County, so we
2 want to take that out. We're objecting to --

3 MR. OLIVER: That's correct, Your Honor, before we
4 ever broach Jordan's deposition again, we will have conformed
5 it to the Court's rulings.

6 THE COURT: Okay. I'm looking at we got some
7 objections, defendants' objection to the deposition of Sam
8 Gerhardt. That shouldn't be coming in.

9 Objection to Betty Sue Wills. I don't see that
10 coming in at all.

11 And then we've got some problems with or at least
12 some objections to the instructions. I think my law clerk
13 called you all and told you all to take out these --

14 MR. OLIVER: May I approach, Your Honor?

15 THE COURT: Put it in the formal names of the
16 various parties as opposed to --

17 MR. OLIVER: May it please the Court. In raising
18 the practical problem that Mr. Briggs and I wanted to bring
19 to the Court's attention, before we start to try to avoid
20 problems, our clients, because a lot of them have the same
21 last name, their typical mode of talk or typical address with
22 respect to Mr. Bob Wills is Pastor Wills, that's the way they
23 refer to Bob Wills. With respect to Sam Gerhardt, it's
24 usually Brother Gerhardt to distinguish him from Bo, his son
25 Bo Gerhardt, who is usually Mr. Gerhardt. Mrs. Wills, Betty

1 Sue Wills is frequently called Sister Wills. And I know that
2 the Court has strong feelings about the appropriateness of
3 titles. And I just wanted to call the Court's attention to
4 the fact that from time to time these people are going to use
5 those titles.

6 THE COURT: I don't have any problem with the
7 witnesses using it because I know they are going to use what
8 they are familiar with. I'm just concerned about how it
9 looks, you know, if it's an appellate issue and the Court of
10 Appeals is looking at it in terms of these instructions. Not
11 me or the jury. Part of all this record stuff is for any
12 appellate court.

13 MR. OLIVER: Well, Your Honor, I didn't -- when I
14 was advised, I have no problem removing it. I just raised --
15 I put it in there because quite frankly, you know, in dealing
16 with them, I've grown accustomed to using their terminology
17 and that's why it's in there.

18 THE COURT: I think it's appropriate for the trial,
19 but I think you're going to have to make it clear to the jury
20 who we're talking about in terms of any instructions, that
21 you're referring to this as your name is that. When you do
22 your closing arguments, you can just make it clear. I was
23 just looking at the appellate situation, that's all. I don't
24 have a problem with it during trial.

25 MR. OLIVER: Thank you, Your Honor.

1 MR. STILLEY: I'm happy, Your Honor.

2 THE COURT: Okay. What other problems do we have
3 other than these instructions that I think we can work with
4 later. Because we got this jury here. We'll take a recess
5 and then we'll see what's happening with our jury so we can
6 get started. We had some -- we got any problems with
7 exhibits or the interrogatories or anything left with that?

8 MR. OLIVER: We do have -- we have problems with --
9 you've effectively excluded several of both side's exhibits.
10 The only exhibit that we have difficulties with is Exhibit
11 39, the plaintiff's exhibits. It's 39 which is
12 unauthenticated sheet from an unauthenticated medical record.
13 It's actually quite misleading.

14 THE COURT: I don't know what 39 is offhand.

15 MR. STILLEY: Your Honor, I got a complete set for
16 you, if I may approach.

17 THE COURT: Sure.

18 MR. STILLEY: Your Honor, maybe I can speed things
19 along here. If we're going to present testimony about the
20 medicine, I'm not sure it would even be relevant to show that
21 he didn't have acne on his back beforehand and he did
22 afterwards. I mean, I'm just trying to be fair with you, I
23 know what you've already ruled.

24 THE COURT: You know what, you're trying to be fair.
25 I'll be the judge of that, please. Be fair. Listen, you're

1 trying to be fair for your client, and Mr. Oliver tries to be
2 fair for his client. And those two things are completely
3 different. Why do you think we've been up here talking for
4 over an hour? And why do you think they give me this robe,
5 have me sit up here and try to figure out the difference
6 between what you both all are talking about is fair. Please.
7 Fine, you say since we're excluding -- since the Court is
8 excluding evidence about medicine and so forth, you're not
9 going to use this exhibit; is that correct?

10 MR. STILLEY: I don't see any way to use it, and I'm
11 willing to withdraw it.

12 THE COURT: Fine. Anything else in that regard,
13 Mr. Oliver?

14 MR. OLIVER: Judge, in view of all your rulings, we
15 don't have any objection to plaintiff's exhibits numbered two
16 through 38, nor 41, which we had previously objected to. In
17 fact, I would suggest the Court just treat them as admitted.

18 THE COURT: Fine, I'll do that then, and that will
19 save some time.

20 Now, let's sort of figure this out. Mr. Stilley, it
21 would seem that you basically got one witness now?

22 MR. STILLEY: Well, I'm going to call the defendants
23 to get just a little evidence from them.

24 THE COURT: Fine. What else do we need to do before
25 we take a recess and see if we got the jury in order here?

1 MR. STILLEY: Your Honor, there's a couple things I
2 want to ask you about. On the exhibits that we've excluded,
3 and we've excluded 39. Is that all that's excluded?

4 THE COURT: That's my understanding. Mr. Oliver
5 said as far as he was concerned two through 38 admitted.

6 MR. OLIVER: We need to look at eight, Your Honor.

7 THE COURT: He changed his mind.

8 MR. OLIVER: No, I'm all for it, but I believe the
9 Court's ruled that eight is out. That's the --

10 THE COURT: Why don't you take it out real quick.

11 MR. OLIVER: That is the Court's order, so I believe
12 the Court's ruling covers that.

13 MR. STILLEY: I want that out.

14 THE COURT: Two through seven, nine through 38
15 without disagreement or objection will be admitted. What
16 else did we need to do before we take a little break here?

17 MR. OLIVER: Forty and 41.

18 THE COURT: We're not doing any 40, 41. They are
19 out as far as I understand. Unless we can see later. What
20 else?

21 MR. STILLEY: We can't have 41?

22 THE COURT: I don't know. I don't know if there is
23 an objection to that.

24 MR. OLIVER: 41 is the pictures of some girls
25 playing. I don't know what it refers to, but it's okay with

1 us.

2 THE COURT: Okay. What about 40?

3 MR. OLIVER: 40 was the affidavit was used to get
4 the arrest warrant.

5 THE COURT: You aren't going to use that, are you,
6 Mr. Stilley?

7 MR. STILLEY: We're going to take all that out. And
8 I may have to take a little out of three, but during the
9 break I'll make sure I don't have anything to violate the
10 order.

11 Here's what I want to ask you about. For the
12 jury -- to advise the jury, can I just move to admit and then
13 recite the numbers, the correct ones? How do you want to
14 handle that?

15 MR. OLIVER: As far as I'm concerned they can be
16 just treated as admitted without any further reference.

17 THE COURT: I don't think I need to rule on it. I
18 mean, if they ask for something, I'll send them back. I've
19 admitted them already basically.

20 MR. STILLEY: I just wanted --

21 THE COURT: Let me show you what's been admitted as
22 exhibit -- you can do it that way.

23 MR. STILLEY: Certainly, that works. One other
24 thing I want to ask you about is since we do have quite a few
25 papers, do you mind if I have Ms. Teri Young help me from

1 time to time at counsel table?

2 MR. OLIVER: I do mind, she's not a lawyer. She's
3 not a paralegal. She is the person who technically under
4 Arkansas law has committed barratry. She's paying for all or
5 part of this. She has no place at counsel table.

6 MR. STILLEY: Judge, I just -- I'm not the best at
7 paper.

8 THE COURT: Is she an employee in your office?

9 MR. STILLEY: No. I must confess, I have employed
10 her in an ad hoc basis from time to time, but she's not an
11 employee in my office.

12 THE COURT: If she's not a paralegal or lawyer, not
13 employed in your office in this capacity, I don't see any way
14 that I can do this. Generally other than parties or the
15 lawyers are not allowed inside those swinging gates anyway
16 unless they are going to testify.

17 MR. STILLEY: I just wanted to check. I just want
18 to check.

19 MR. OLIVER: We ask for the rule on witnesses.

20 THE COURT: You understand that? So that will go
21 for both sides. That means that if you are a witness you can
22 only be in here if you are testifying.

23 MR. OLIVER: Or if you're a party.

24 MR. STILLEY: I understand that.

25 THE COURT: Anything else?

1 MR. OLIVER: Nothing, Your Honor.

2 THE COURT: Why don't we -- we better give us 15
3 minutes. 20 minutes to 11 we'll get started.

4 (Court in recess from 10:24 a.m. until 10:48 a.m.)

5 (Voir dire conducted.)

6 (Jury seated and sworn.)

7 THE COURT: Ladies and gentlemen of the jury, I'm
8 going to take a few moments now to give you some initial
9 instructions about this case and about your duties as jurors.
10 At the end of the trial I'll give you further instructions.
11 I may also give you instructions during the trial. Unless I
12 specifically tell you otherwise, all such instructions, both
13 those that are given now as well as those that are given
14 later are equally binding upon you and must be followed.

15 This is a civil case which I've explained to you
16 brought by Jordan Blair against Bob Wills doing business as
17 Mountain Park Boarding Academy, and all the other defendants
18 who were introduced to you earlier today.

19 Now, there are two claims in this case, one is that
20 Plaintiff Blair asserts that there was a battery committed
21 against him by the Defendant Bo Gerhardt on October 24th, a
22 shoving incident that he claims. And Mr. Gerhardt denies
23 this.

24 The second claim of the Plaintiff Blair is made
25 against all defendants that under federal law, specifically

1 the Fair Labor Standards Act, that he was an employee of the
2 defendants because he performed these various tasks while as
3 a student at Mountain Park and Palm Lane. Plaintiff claims
4 that he should have been paid for performing these tasks.
5 All of the defendants deny that Mr. Blair was ever an
6 employee. So that's what this case is about.

7 From the evidence you will decide what the facts
8 are. You're entitled to consider that evidence in light of
9 your own observations and experiences in the affairs of life.
10 You will then applies those facts to the law which I give you
11 in these as well as the other instructions and in that way
12 reach your verdict.

13 You are the sole judges of the facts, but you must
14 follow the law as given in the instructions whether you agree
15 with it or not. In deciding what the facts are, you may have
16 to decide what testimony you believe and what testimony you
17 do not believe. You may believe all of what a witness has
18 said, only part of it, or none of it.

19 In deciding what testimony to believe, consider the
20 witnesses' intelligence, their opportunity to have seen or
21 heard the things testified about, their memories, any motives
22 they may have for testifying a certain way, their manner
23 while testifying, whether they said something different at an
24 earlier time, the general reasonableness of their testimony,
25 and the extent to which their testimony is consistent with

1 other evidence that you believe. Do not allow sympathy or
2 prejudice to influence you. The law demands of you a just
3 verdict unaffected by anything except the evidence, your
4 common sense, and the law as given in the instructions.

5 You should not take anything that I may say or do
6 during the trial as indicating what I think of the evidence
7 or what I think your verdict should be, that is entirely up
8 to you. Evidence from which you will find the facts will
9 consist of the testimony of witnesses and documents and other
10 things received in the record as exhibits and any facts that
11 the lawyers agree to, that we call that a stipulation or that
12 the Court may instruct you to so find.

13 Certain things, however, are not evidence and I'm
14 going to list those things for you now. Statements,
15 arguments, questions by the lawyers are not evidence.
16 Objections to questions are not evidence. The lawyers have
17 an obligation to their client to make an objection when they
18 believe that evidence that is being offered is improper under
19 the rules of evidence. You should not be influenced by the
20 fact that an objection has been made nor the Court's ruling
21 on an objection. If an objection is sustained, you should
22 ignore the question and not try to guess as to what the
23 answer might have been.

24 If the objection is overruled, you should treat the
25 answer just like any other. If you're instructed that some

1 item of evidence is being received for a limited purpose,
2 then you must follow that instruction. Testimony that has
3 been excluded by the Court or that you're told to disregard
4 is not evidence and must not be considered.

5 Anything that you've seen or heard outside the
6 courtroom is not evidence and must be disregarded. You're to
7 decide this case solely on the evidence presented here in the
8 courtroom.

9 At times during the trial I may sustain objections
10 to questions asked without permitting the witness to answer
11 or where an answer has been given may instruct that it be
12 stricken from the record and that you disregard it and
13 dismiss it from your minds. You may not draw any inference
14 from an unanswered question nor may you consider testimony
15 which has been stricken in reaching your decision. The law
16 requires that your decision be made solely upon the competent
17 evidence before you. Such items that are excluded from your
18 consideration will be excluded because they are not legally
19 admissible.

20 The law does not require, however, that you accept
21 all of the evidence that is admitted, even though it may be
22 competent. In determining what evidence you will accept, you
23 must make your own evaluation of the testimony given by each
24 of the witnesses and determine the degree or weight you
25 choose to give such testimony.

1 Some of you have heard of the terms direct and
2 circumstantial evidence. You're instructed that you should
3 not be concerned with those terms since the law makes no
4 distinction between the weight to be given to direct and
5 circumstantial evidence. In these instructions you're told
6 that your verdict depends on whether you find certain facts
7 have been proved.

8 The burden of proving a fact is upon the party whose
9 claim depends upon that fact. The party who has the burden
10 of proving a fact must prove it by the preponderance of the
11 evidence or the greater weight of the evidence. To prove
12 something by the preponderance of the evidence is to prove
13 that it is more likely true than not true. It is determined
14 by considering all of the evidence and deciding which
15 evidence is more believable.

16 If on any issue in the case the evidence is equally
17 balanced, you cannot find that that issue has been proved.
18 The preponderance of the evidence is not necessarily
19 determined by the greater number of witnesses or exhibits a
20 party has presented.

21 You may have heard of the term proof beyond a
22 reasonable doubt. That is a stricter standard which applies
23 in criminal cases. It does not apply in civil cases such as
24 this. You should, therefore, put it out of your minds.

25 Now, earlier when we took a recess I gave you the

1 admonition. I'll give it to you here again and ask you to
2 recall it when I ask you to abide by the admonition.

3 During the trial you're not to discuss this case
4 with anyone or permit anyone to discuss it with you. Until
5 you retire to your jury room at the end of the case to
6 deliberate on your verdict, you are simply not to talk about
7 the case.

8 Secondly, you're not to read or listen to anything
9 touching on the case in any way. If anyone should try to
10 talk to you about this case, bring it to the Court's
11 attention promptly. You should not try to do any research or
12 make any investigation on your own about this case. Do not
13 form any opinion until all the evidence is in. So keep an
14 open mind until you start your deliberations at the end of
15 the case.

16 At the end of the trial you'll have to make your
17 decision based upon what you recall of the evidence because
18 you will not have a written transcript. It will be
19 impractical for Sue to read back lengthy transcript
20 testimony, so pay close attention to the testimony as it is
21 given.

22 The trial is ready to begin now. And it won't be
23 long before we go to lunch, okay. The trial is ready to
24 begin now, and I understand you all did come in at 9:30, so
25 we'll try to get a little done before we go to lunch.

1 First, each side may make an opening statement. And
2 an opening statement is neither evidence nor argument. It is
3 an outline of what that party intends to prove offered to
4 help you in following the evidence.

5 Next, the plaintiff will present his witnesses and
6 the defendant may cross-examine them. Then the defendant
7 will present their witnesses and plaintiff may cross-examine
8 those witnesses. After that the attorneys will make their
9 closing arguments to summarize the evidence and interpret the
10 evidence for you. And you will be given -- then the Court
11 will give you the final instructions of law, and you will
12 then retire to your jury room to deliberate on the case.

13 But we want to see what we can do with getting these
14 opening statements in.

15 MR. OLIVER: May it please the Court. Could we be
16 able to use the ELMO in opening?

17 THE COURT: Yeah.

18 MR. OLIVER: We need to bring the TV in. I wonder
19 given that, might we do lunch first.

20 THE COURT: It will just take a few minutes I've
21 been told. How about yourself, do you need it?

22 MR. STILLEY: I don't have any problem at all about
23 going to lunch first and then doing this after lunch, but
24 I'll let the Court make the call on that.

25 THE COURT: The call has been made, it doesn't take

1 long to get the TV.

2 MR. OLIVER: Could we help? I'd be glad to help. I
3 can't help it I'm hungry.

4 THE COURT: I understand. Mr. Stilley.

5 MR. STILLEY: May it please the Court, counsel,
6 ladies and gentlemen of the jury. My name is Oscar Stilley.
7 I represent the plaintiff, Jordan Blair, and I'm going to
8 take just a few minutes here to explain to you what this case
9 is about.

10 It is a very simple case. There's two claims,
11 there's a claim of battery that is directed at only one
12 individual, and that is Bo Gerhardt. And the judge already
13 told you what that is about. That is about an incident in
14 which Mr. Blair alleges that he was slammed into a counter
15 immediately after he arrived at Mountain Park.

16 And then we got the second claim, which is a Fair
17 Labor Standards claim for minimum wages and overtime pay for
18 the failure to pay for the work that was compelled of him
19 while he was at Mountain Park. It is a simple case and I
20 don't want to make it more complicated than it is.

21 Let me tell you first what this case is not. This
22 case is not a contest between religions. As a matter of fact
23 these folks are Baptist, I'm Baptist, I went to a Baptist
24 church, my wife is Baptist. My client is -- has grown up in
25 the faith. And he by no means is opposed to the faith, so

1 don't get the idea there is any objection on the part of
2 anybody to Christianity or religion, that is not the case.
3 The case is about a young man.

4 Let me just tell you just a little about the
5 evidence that you're going to hear about his life. He was a
6 good student by all counts. He in the earlier part of high
7 school, he was in public school, made As and Bs, was on the
8 football team, well liked, made the paper from time to time
9 for his athletics. After that he was taken out of the public
10 school and put into a private school where he completed his
11 high school education.

12 And after this point in time is when he was sent to
13 Mountain Park. Right after that point in time that he was
14 sent to Mountain Park. And at Mountain Park he was forced to
15 get up in the morning about 5:30 a.m. And part of the day
16 that would put him in certain kind of educational activities
17 or least they claim they were educational activities, but the
18 great part of the day they had him working doing things like
19 building fences, building or repairing barns, digging ponds.
20 They actually had him to work to dig a pond with a shovel.

21 Mr. Wills has a yacht in Florida. He was compelled
22 to work on that yacht polishing things, taking care of that
23 vessel and otherwise doing work for the defendants. He
24 worked on their houses. He worked on the grounds around
25 their houses. And not just a small amount of work, but he

1 was worked -- from time to time he was forced to work from
2 this early hour and he got very little time to get around and
3 rest and do other things that you would ordinarily do.
4 Sometimes he was forced to work into the wee hours of the
5 morning and forced to get back up again at 5:30 in the
6 morning and go again and do the same thing.

7 He didn't have an option about this. He was told to
8 do this. And the defense has alluded to this is not the kind
9 of school where you just come and go when you want to. This
10 is the kind of school where you can't leave and you cannot
11 communicate with anybody except the people that the operators
12 of this enterprise want you to communicate with. So it's not
13 a matter that he can just say, well, I'll find my way
14 somewhere else. He was forced to do this work under threat
15 of serious damage to himself if he did not do this work. So
16 that's the situation we have here.

17 Of course the defendants are all denying that they
18 are employers. So we're going to have to put on some
19 evidence about who this enterprise actually belonged to.
20 Mountain Park Baptist Boarding Academy is not a corporation.
21 There is no formal zoning section. That's the name that's
22 used by certain individuals. So I'm going to ask some
23 information, asking questions of some of these individuals to
24 see who is making profits off this so that you'll have a
25 better opportunity to determine who was getting the financial

1 benefit from this young man's labor, on the grounds that the
2 people that are getting the benefit from that labor are the
3 employers. Whether they admit that or not, that is --

4 MR. OLIVER: That's an improper standard, Your
5 Honor, I object. That's not the standard.

6 THE COURT: Overruled.

7 MR. STILLEY: At any rate, I will certainly try to
8 keep this as reasonably brief as I can just to show you what
9 the facts were during this period of time, what kind of work
10 that he did by testimony, and that he left. Actually he was
11 sent to Mountain Park in Missouri because he comes from
12 Arkansas. He was born and raised in Crawford County,
13 Arkansas. He was sent to Mountain Park October 24th, 2001.
14 On the 9th or 10th of November of 2001 he was taken to
15 Florida against his will to the Palm Lane Boarding Academy
16 there.

17 MR. OLIVER: I do object now, Your Honor. I mean,
18 he's already treaded the line twice. Objection.

19 THE COURT: We are not here about, you know, how
20 he's in this school or anything of that nature.

21 MR. STILLEY: Certainly, Judge, I understand. Let
22 me see if I can -- let me see if I can --

23 THE COURT: He didn't have anything to do with the
24 decision as to going to Palm Lane.

25 MR. STILLEY: Correct. Thank you, Judge. At any

1 rate, I believe it was the 15th of March of 2002 that he
2 escaped from Palm Lane, left and went back to Arkansas. And
3 at that point in time obviously he was no longer performing
4 any work for Palm Lane Academy.

5 So thank you very much for your time and attention.
6 That's the evidence that we anticipate presenting in this
7 case. Thank you very much.

8 MR. OLIVER: Give me a second to get my composure,
9 Your Honor. May it please the Court.

10 THE COURT: Go ahead, Mr. Oliver.

11 MR. OLIVER: Mr. Blair, Mr. Stilley, ladies and
12 gentlemen. My honor to represent Bob and Betty Sue Wills and
13 Sam Gerhardt, who make up the leadership of Mountain Park
14 Baptist Church and its ministry, the Mountain Park Baptist
15 Boarding Academy, and to represent Palm Lane Baptist Church,
16 which is a Florida corporation which has as its primary
17 ministry, the Palm Lane Baptist Boarding Academy. And also
18 with John to represent the staff.

19 In 1987 the Wills, Pastor Wills and Betty Wills,
20 opened with Sam Gerhardt the Mountain Park Baptist Church out
21 in Patterson, Missouri. And they began their ministry which
22 is this Palm Lane Baptist Boarding Academy. Students are
23 enrolled here by their parents with -- this is from
24 Plaintiff's Exhibit No. 9, with the full knowledge that
25 Mountain Park was a boarding academy that has two missions,

1 one mission is to provide college preparatory academic
2 program, and the other is to provide an environment of faith
3 through nurturing Christian values of biblical self image to
4 try to help these troubled children to accomplish two things,
5 one to walk with God and to develop their own faith while
6 simultaneously and in an integrated program advancing
7 academically.

8 Jordan came in to this well-established program on
9 October the 24th, 2002. He came in to -- I'm sorry, October
10 the 24th, 2001. He came in to a well-established program, a
11 program which begins at 5:30 in the morning and throughout
12 the day till nine or 9:30 at night, provided rigid, a rigid
13 environment and a rigid structure for these troubled
14 children, boys on the one hand, girls on the other hand.

15 The structure involves separation between boys and
16 girls, very high standards of conduct and discipline. At the
17 same time they integrated this concept. And the concept is
18 very simple, if you live in a life where there is Christian
19 example, and if you have the opportunity to read the bible,
20 to learn the bible and to walk with others who walk with God,
21 then you are going to be or have the opportunity to restore
22 yourself, to gain a new respect for authority, to gain
23 biblical self image, which is the image of the body as a
24 temple, to have respect for yourself, respect for others, to
25 develop a sense of personal responsibility and work ethic at

1 the same time learning how to work with others. Because
2 these are after all troubled children that come to this
3 school.

4 Now, when they come here they are also introduced to
5 an academic program. And we don't need to go through the
6 academic program other than you know it's an integrated part
7 of this. They use a Christian curriculum called the School
8 of Tomorrow curriculum, which involves a system called PACE,
9 which is just a way that you establish where you are. A lot
10 of this is computer based. And it's integrated with the
11 Landmark Freedom Baptist curriculum. So this is an
12 integrated academic program and an integrated religious
13 program is taught together in a very rigid structured system.

14 Who is involved in the system? Well, in Missouri
15 involved in the system when Jordan was there, the evidence
16 will be Pastor Wills is on top, he makes the decisions. This
17 is an independent fundamental Baptist church. He makes the
18 decisions with input from Betty, his wife, whose job title is
19 executive administrator. And then with Sam Gerhardt who has
20 had a variety of titles but essentially at the time Jordan
21 was there, he was associate pastor. As all practical though
22 the evidence will be that he ran the day-to-day activities of
23 the operation.

24 Robert O'Brient, who is also a defendant, was the
25 principal or the director as you were of the academic

1 program. He ran the academic program. Bo Gerhardt helped
2 with the male students, sort of dorm supervisor for want of a
3 better way to describe it. Julie was there, but she and
4 Debbie, Mrs. Gerhardt, Sam's wife, are on the other side,
5 they are on the girl's side. And they don't have input into
6 the essential decisions that relate to the boys.

7 Day to day Sam Gerhardt, Brother Gerhardt, is what
8 they usually refer to him or Brother Sam, runs it day to day.
9 Brother O'Brient, or Brother O'Brient runs the school part.
10 Bo helps in the dorm and at the time was involved in the
11 learning center.

12 In Florida at Palm Lane at the time that -- well,
13 I'll just tell you, Palm Lane is a corporation, okay. Palm
14 Lane, its officers, the two that make the decisions are Bob
15 Wills and Betty Sue Wills. They have the same titles, pastor
16 and executive administrative assistant.

17 The people that hire, fire, set wages, set policy
18 are Bob Wills, Betty -- Bob Wills, Betty, you all know the
19 wife always participates in decisions. And Sam has
20 significant input at Mountain Park but not at Palm Lane.

21 Now, the Blair involvement with Mountain Park
22 started on October the 20th of the year 2000 when Ron Blair
23 called Mountain Park and made some preliminary inquiries and
24 was sent a packet of information. The packet of information
25 includes an application, which you will see, part of it has

1 already been admitted as Plaintiff's Exhibit No. 2. And part
2 of this package is a parent handbook or a parent/student
3 handbook which has already been admitted which is Exhibit
4 No. 9. This explains the philosophy of Mountain Park to the
5 parents before they ever come there.

6 Sam didn't hear from the Blairs for about a year.
7 And on October the 2nd, 2001 he got another phone call from
8 Mr. Ron Blair, the father, indicating a renewed interest
9 because of activities at home, a renewed interest in sending
10 Jordan to Mountain Park. He asked for another information
11 package and he got another information package. And then
12 Mr. Blair called back on October the 9th and explained in
13 greater detail the problems at home. And on October the 20th
14 the Blairs arrived, Ron and Jannett Blair, and went through
15 parent orientation. You know, this is not your basic
16 kindergarten, this is not your basic public school. And
17 parents are required to go through orientation so they
18 understand the school before they make the commitment.

19 And the Blairs came and went through the orientation
20 process and saw how the school works in great detail and
21 signed the enrollment forms. They call on October the 24th,
22 2001 and formally enrolled Jordan Blair in Mountain Park
23 knowing that before he turned 17 he would be moved to Palm
24 Lane.

25 So the plan was to stay at Mountain Park until about

1 Jordan's 17th birthday, and then move him to Palm Lane.

2 Jordan arrived on the evening of October the 24th. He was
3 met by a young man named Drew Parrish, who as they do with
4 every child is enrolled tries to, you know, engage in small
5 talk, trying to make these kids relax, try to make them
6 understand the environment that they are in. And they come
7 in to the boy's dorm and you go downstairs and there is a
8 couch down there that is routinely used to discuss the
9 situation with new students. We're trying to put them at
10 ease. You know, most of them are not real pleased to be
11 there. They know they are going in to a strict religious
12 rigid environment. Well, some don't want to be there.

13 Trying to put them at ease, and at the same time try to
14 conform to our requirements. You know, we have rules about
15 what you can and cannot have, what you can and cannot bring.

16 So every student is talked to, talked to on the
17 couch about this. About this time Bo comes. Bo comes down,
18 has the conversation with Jordan. One of the things that
19 they do is to inspect everything that's brought to make sure
20 there's no contraband. You know, no long knives that -- you
21 know, that the clothing that they bring is appropriate. You
22 know, this is a white T-shirt, high necks, no V-necks for
23 young ladies, no rock band T-shirts. It's a change for these
24 kids.

25 So there's an inspection to make sure that

1 everything that the child has brought, young person's brought
2 fits. While the inspection is going on, all children take a
3 shower. These young people are taken to the shower and they
4 take a shower. This is the first thing they want, clean
5 children. You now take care of your body and have respect
6 for yourselves as the temple of the Lord because your body is
7 a temple. If you don't have that, you're not going to ever
8 have respect for others.

9 And then the child is integrated into the activities
10 of the school that are ongoing at the time they arrive. Now,
11 what did not happen on November the 24th is that Bo Gerhardt
12 did not take Jordan Blair and slammed him up against
13 anything. There is a no touch policy at Mountain Park.
14 Students don't discipline students. Staff does not use
15 physical discipline on students except swats which are the
16 last resort, and they are never administered to Jordan.

17 This is an invention. It did not happen. Bo comes
18 in, meets Jordan, engages in small talk, explains the basic
19 rules, hands him this towel and bar of soap, sends him to the
20 shower while they inspect his goods, make sure that there is
21 nothing inappropriate there, no long knives, no inappropriate
22 clothes, that kind of thing, no inappropriate rock music, no
23 inappropriate books. Do they have the correct bible, King
24 James version, the correct one. Because that's the
25 environment that he's changed to. You don't slam any child

1 in the staff area into any bathroom. It doesn't happen and
2 it did not happen.

3 Now, then Mr. Blair then was just integrated into
4 the program. Well, the program that was going on at that
5 particular time would have been to sleep. So after his
6 shower he would have been shown to the dormitory. They all
7 sleep in a dorm. The next day he would have been integrated
8 into the regular Monday through Friday program. This isn't
9 an absolute, but this is pretty much what the schedule is.
10 It differs on Wednesday night because on Wednesday night you
11 have additional church service. It differs on Friday night
12 because on Friday night you have movies. And it differs on
13 Saturday and Sunday.

14 But basically you get up in the morning, you start
15 off with your personal hygiene. Then there is a period of
16 time for bible reading and personal devotions. This is an
17 essential part of the way the school functions. We believe
18 that if shown a chance to know the Lord, if they develop a
19 personal relationship with the Lord and become saved, they
20 will be restored to society.

21 After that they eat and then they come to common
22 area cleaning. That's one of the -- considered by Mountain
23 Park to be one of the basics. Every student, every student,
24 for every student the very basics of character development
25 begin with responsibility to maintain their personal and

1 common areas. This is how they do it at Mountain Park. They
2 have teams. Because teamwork is something that troubled
3 people lack. And they need to learn to work together to
4 learn self-respect and how to deal with other people.

5 So they are assigned teams and they start off the
6 day then cleaning the common area. Then at 8:15, from
7 8:15 to noon and then afternoon till about 2:30 they go to
8 school. School is, as I showed you from the Plaintiff's
9 Exhibit 9, school is the academic program which is the School
10 of Tomorrow curriculum. A self-based integrated learning
11 program combined with the Freedom Baptist curriculum which is
12 the religious portion.

13 So from 8:15 in the morning to noon and then from
14 one o'clock to 2:30 is the academic program. After the
15 academic program there is work and there is sports. This is
16 just Monday through Friday. Sunday afternoon is -- unless
17 you're on discipline, Sunday afternoon is free time.
18 Saturday afternoon is a variety of different things. But
19 from 2:30 to roughly five o'clock you do one of two things,
20 you either work or you play sports. Some days they play
21 sports; soccer, volleyball, baseball, softball, swim. That's
22 activity some days. And some days they work.

23 Now, what do they do? What do they do, in teams a
24 whole lot of things. What is the point of the work? Well,
25 I'll tell you what we don't do. We don't make anything,

1 except to provide an opportunity by Christian example in
2 reference to the bible is the word of God. The only thing we
3 make is an opportunity for these children, troubled children
4 to find God and by finding God be restored to society. But
5 we don't make any products. We don't sell anything. We
6 don't buy and sell farm equipment. We don't buy and sell
7 machinery. We don't repair, buy, and sell farm equipment or
8 machinery. We don't run cattle farms. We don't run horse
9 farms. We have a singular mission ministry, save troubled
10 youth and at the same time educate them. And this is
11 integrated into it.

12 So children, young people in the afternoon learn
13 work ethic, self-respect, team work, a self accomplishment,
14 relearn a sense of pride by either as groups playing sports
15 or doing things. What do they do? They stack firewood. We
16 have -- a hot water heater is wood fire. They stack
17 firewood. Do they do it all the time? No, the guy that
18 sells the school the firewood stacks it some of the time, but
19 that's an activity that they do. We leave a part of the
20 grounds unmowed. Most the grounds are mowed with a bushhog,
21 particularly down in Florida. We leave a part unmowed so
22 that we can reintroduce young people to manual labor, to hard
23 work, where they go cut weeds or mow grass or pick up limbs.
24 Or down in Florida where it rains and blows a lot, pick up
25 what's blown in. Or maybe paint fences.

1 So that they accomplish something, something that
2 they've not apparently in their life accomplished it with
3 other people. We don't sell this product. We don't put it
4 into the stream of commerce. We use this opportunity to
5 teach these young people how to work in society with each
6 other. A self-respect and work ethic just exactly like we
7 tell the parents when they enroll their children that we are
8 going to restore.

9 These children by providing nurturing Christian
10 values of respect for authority, learn how to take direction,
11 a biblical self image and Christian services. We nurture
12 them at student growth, respectfulness, leadership, and
13 creativity. And in part, and, in fact, in whole this work or
14 play environment is intended exactly to do that, to teach
15 cooperation, like the sports, to teach cooperation, to teach
16 children respect for authority so they don't end up like me
17 yelling at every basketball official. I don't think a SEMO
18 official has ever made a good call, but somebody ought to
19 teach them better than I learned. It's respect for
20 authority, something that most of these children when they
21 come don't have.

22 So, yeah, sure, they have to clean up in the
23 morning. And, yes, they have to work or play sports in the
24 afternoon. Because it's part of how we put their lives back
25 together. Teamwork, self-discipline, accomplishment,

1 service, we integrate this with other students called
2 orientation guides, students that show willingness to
3 minister to others with team leaders, students who show
4 willingness to minister and have leadership responsibility.
5 And we take unacceptable peer pressure and throw it out the
6 window and substitute peer pressure with peer pressure to
7 save children. And by example these children are restored,
8 hopefully restored to society believing in Christ, saved with
9 strong academic background, an unaccredited but Christian
10 school academic background. And this is the philosophy of
11 Mountain Park, and it is the background into that philosophy
12 that Jordan came and was moved to Florida where he stayed
13 till he walked away on March the 15th.

14 There will be no evidence that we are a business
15 enterprise or that we engage in any commerce. There is no
16 evidence that any of the defendants except Bob Wills, Sue
17 Wills and Sam have any right to hire, fire, set wages or do
18 anything that people who are employers are. This isn't
19 employment. This is education. It's education with your
20 mind, with your spirit, and with your hands. So that if you
21 keep your commitment to Mountain Park or you keep your
22 commitment to Palm Lane, after a year you have a realistic
23 chance to be a restored human with a faith in God and an
24 ability to work in society fully educated. And that's what
25 the evidence will be.

1 There is no employment here. He wasn't employed by
2 anybody. Nobody employed him. Nobody is an employer as
3 relates to Jordan. This is an integrated part of a system
4 designed by the Wills to save children. When you hear the
5 evidence you'll know that Bo Gerhardt didn't slam Jordan
6 Blair up against anything. Violent conduct begets violent
7 conduct. It's against the rules. It's against Christian
8 example. It didn't happen.

9 And neither did we work this boy in employment. We
10 didn't produce any goods for employment. Did the boy do
11 work? Absolutely did chores in the morning, did work in the
12 afternoon to restore himself. The only tragedy here is he
13 didn't stay long enough for it to take. Thank you.

14 THE COURT: Ladies and gentlemen of the jury, we'll
15 take our luncheon recess at this time. Recall the admonition
16 with regard to no discussion of the case and so forth and so
17 on. Have a pleasant lunch. Why don't you look at returning
18 to your jury room at 2:15 p.m. Have a pleasant lunch.

19 (Court in recess from 12:58 p.m. until 2:13 p.m.)

20 (The following proceedings were held outside the
21 hearing of the jury:)

22 THE COURT: Good afternoon. I understand you all
23 had something you wanted to talk to me about?

24 MR. STILLEY: Yes, Your Honor. On the defendants'
25 exhibits in light of the rulings this morning, I'm moving to

1 require the defendants to strike anything in their pleadings
2 about Mr. Blair's alleged pornography or impression of credit
3 cards or anything of that nature. Other than that I don't
4 have any objection to this Exhibit B. But based on the
5 Court's rulings, I think this information should be kept out
6 for a number of reasons including excessive prejudice.

7 THE COURT: Mr. Briggs.

8 MR. BRIGGS: Your Honor, Defendants' Exhibit A I put
9 up on the ELMO. We're specifically referring to the first
10 page of A. And what Mr. Stilley is concerned about is about
11 a third of the way down the page, I'll highlight it for the
12 Court. This is previously prepared, it's a form that
13 defendant sends to the parents who are considering enrolling
14 their children in Mountain Park. Since the purpose is to
15 minister to troubled youth, one of the things that Mountain
16 Park wants to find out is what the parents are concerned
17 about. There are several preset things; alcohol, drugs,
18 sexual activity.

19 THE COURT: Why are we concerned about it though?

20 MR. BRIGGS: Your Honor, I don't think we're
21 concerned about it at all. We aren't offering this or we
22 wouldn't offer this to prove the truth of the matter whether
23 Mr. Blair was engaging in pornography, depression of stolen
24 credit card or anything else. The only reason we might refer
25 to this exhibit would be specifically to identify what was

1 presented to Mountain Park, what Pastor Gerhardt had as an
2 understanding that the parents believed Jordan was troubled.
3 That's the basis, not to prove that he necessarily was or to
4 establish that he necessarily was. So we aren't offering it
5 to prove --

6 THE COURT: Fine. That's excluded. What else?

7 MR. STILLEY: Your Honor, I didn't see Drew Parrish
8 here. Is Drew Parrish here?

9 MR. BRIGGS: No, he's not here yet.

10 MR. STILLEY: Your Honor, I'd move for default
11 judgment against Drew Parrish for failure to show up.

12 THE COURT: Denied.

13 MR. STILLEY: Okay. Thank you.

14 THE COURT: Anything else?

15 MR. STILLEY: That's all, Judge. Thank you.

16 MR. OLIVER: Could I have a minute? I need to
17 figure out a way to get this redacted. I'll figure it out.

18 THE COURT: Fine. Let's bring the jury on.

19 (The following proceedings continued within the
20 hearing of the jury:)

21 THE COURT: Good afternoon, ladies and gentlemen of
22 the jury. Okay. We ready to proceed?

23 MR. STILLEY: Yes, Your Honor.

24 THE COURT: Call your first witness.

25 MR. STILLEY: Betty Sue Wills.

1 BETTY SUE WILLS,

2 Having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. STILLEY:

6 Q. Please state your name.

7 A. Betty Sue Wills.

8 Q. Where do you live?

9 A. Fort Meyers, Florida.

10 Q. And where do you work?

11 A. At Palm Lane in Mountain Park.

12 Q. What is the full legal name of Mountain Park?

13 A. Mountain Park Baptist Church and Mountain Park Boarding
14 Academy.

15 Q. Is that a formal organization or that just a doing
16 business as name?

17 A. It's an organization.

18 Q. Is it a corporation?

19 A. No, sir.

20 Q. Is it a partnership?

21 A. No, sir.

22 Q. Is it a sole proprietorship?

23 A. It's a church and a boarding academy.

24 Q. Okay. What is the organizational structure of the --
25 of Mountain Park?

1 A. What is the structure?

2 Q. Right. Who owns -- let me put it like this. Who owns
3 the property that is used by this organization?

4 A. Mountain Park Baptist Church.

5 Q. Okay. Is there a legal entity called Mountain Park
6 Baptist Church?

7 A. It's a Mountain Park Baptist Church, yes, sir.

8 Q. But that's not a corporation?

9 A. No, sir, it's not a corporation.

10 Q. Whose name -- whose name is on the deed of the property
11 that the operation is on?

12 A. Mountain Park Baptist Church.

13 Q. Okay. So it's not in the name of any particular
14 individual?

15 A. No, sir.

16 Q. Okay, all right. If the operation were to dissolve and
17 cease operations, who would get the --

18 MR. OLIVER: Objection, Your Honor, where we going?
19 It's a church, not a 501c3 corporation. He's asking for
20 legal conclusions.

21 THE COURT: In the earlier ruling we were looking at
22 if there is an employer/employee relationship. We're trying
23 to -- I gave him some leeway to find out who would be the
24 employer. That's where we are with this.

25 MR. OLIVER: Well, for the record, Your Honor, then

1 I object to inquiring tax status or tax ramifications, which
2 is all this is.

3 THE COURT: Well, maybe you all can reach an
4 agreement and make everybody happy.

5 MR. OLIVER: Your Honor, we offered to stipulate
6 it's an unincorporated voluntary association organized as an
7 independent fundamental Baptist church.

8 THE COURT: Come on up.

9 (The following proceedings were held at the bench
10 and outside the hearing of the jury:)

11 THE COURT: What I'm referring to and so I was
12 talking about earlier is if, in fact, there was a
13 determination that there was an employee/employer
14 relationship, who would be the employer.

15 MR. OLIVER: And with that regard, Judge, I don't
16 mind Mr. Stilley inquiring into who makes the decisions, who
17 had -- the criteria set out by the courts are clear it's who
18 hires and fires and sets salaries, not who gets the money if
19 the church dissolves.

20 MR. STILLEY: I want to know who has the assets on
21 that.

22 MR. OLIVER: The assets -- well, that's premature.
23 There's no judgment. There are no punitive damages in the
24 FLSA case.

25 THE COURT: I'm looking at allowing him to have some

1 broad inquiry in terms of who the employer is. Now, one does
2 not have to admit that one is an employer. But, I mean, for
3 ownership purposes or whatever else, it could make it very,
4 very simple if you all would reach some kind of agreement.
5 Otherwise we're going to have to go through all this.

6 MR. OLIVER: I stated in opening statement
7 unequivocally that Pastor Wills, Betty Wills, and Sam
8 Gerhardt were the decision makers. They are the ones that
9 hire, fire, and set salaries. And that is the criteria, the
10 sole criteria under the pattern instructions definition of
11 who an employer is, the person who acts in the interest of
12 the employer and that's somebody who has power to fire, hire.

13 THE COURT: You all need to reach a stipulation to
14 tell this jury so there is no question about this.

15 MR. STILLEY: I think it would be in everybody's
16 advantage for them to just stipulate that all these
17 individuals are employers.

18 MR. OLIVER: We aren't.

19 THE COURT: They are not going to stipulate that --

20 MR. OLIVER: I don't agree that anybody is an
21 employer. But the people who had decision making are Pastor
22 Wills, Betty Wills, and Sam Gerhardt, that's pretty
23 straightforward.

24 MR. STILLEY: I'm going to be looking at who is
25 deriving the benefit from this, who gets the money from it.

1 And I think that's where you have to go down to see who is,
2 in fact, the employer. Because you don't have a formal
3 organization, you don't have a corporation. I think we can
4 tell from this witness already they don't have any formal
5 organization at all. It's just a name that they do business
6 by, and it's the individuals doing the business. And I want
7 to know which individuals are getting the money and how much.
8 I think that that tells us who the equitable owner of this
9 business is.

10 THE COURT: Part of my problem is this with any
11 company, people can be making decisions, but that doesn't
12 make them the owners of the company. Just because somebody
13 at Ralston or Anheuser-Busch, they make decisions, they don't
14 own the company. So even though we may have some people
15 making decisions, that doesn't mean they are necessarily the
16 employers. They could be, could not be.

17 So, I mean, there could be a stipulation that you're
18 not admitting, nobody is admitting that they are, in fact you
19 challenge the fact that they are employers. But if there is
20 anyone to be classified in such a status, it would be these
21 people, then we're through with all this.

22 MR. OLIVER: It would be these people, Pastor Wills,
23 Sam Gerhardt, and Betty Sue Wills.

24 THE COURT: What about that? We have to tell the
25 jury this so we can end this, so we can have that as a fact

1 if they determine by the nature that there's an employer/
2 employee relationship.

3 MR. STILLEY: I want to establish that the others
4 are too, the rest of them, because they operated as a group
5 making money. And I think that the testimony is going to
6 show that the money that came into this organization was
7 passed out in the form of de facto dividends to various
8 individuals.

9 THE COURT: So you don't want a stipulation?

10 MR. STILLEY: I would take a stipulation if they
11 would stipulate that all the defendants are employers. I
12 mean, that's satisfactory to me.

13 MR. OLIVER: Your Honor, his inquiry is the wrong
14 legal test for the definition of employer. An employer is
15 the organization or someone who acts in the interest of the
16 organization which is clearly defined as the hire, fire
17 people. And to use your analogy, it's the Anheuser-Busch,
18 it's not the shareholders. They can't under an FLSA case,
19 you can't get to the shareholders because they get dividends,
20 it's only the decision makers. And we're willing to -- I
21 mean, the deposition testimony is clear and we're willing to
22 agree as to who the decision makers are.

23 MR. STILLEY: Well, as you said, Judge, though, the
24 decision makers aren't necessarily liable for any wages. You
25 can get fired by your boss who has legitimate right to fire

1 you, but you can't sue him. It's a different question where
2 you have what amounts to a de facto partnership of various
3 people that came together and began to work in the operation
4 and they divide the money.

5 THE COURT: You're saying you want all the
6 defendants, Mr. Stilley is saying only several of the
7 individuals.

8 MR. STILLEY: Right. And if I can just inquire --
9 maybe just a little more about the ownership structure and
10 then about who gets the money off this, I think that we have
11 a clear picture.

12 MR. OLIVER: Who gets the money is entirely
13 irrelevant, purely prejudicial. Who gets the money is --

14 MR. BRIGGS: It's profit information. It's outside
15 the scope of this inquiry.

16 MR. STILLEY: Well, profit information in a
17 partnership setting is very, very appropriate and very
18 relevant to this, to who the employer is.

19 MR. OLIVER: You haven't pled partnership, it's
20 outside the pleadings.

21 THE COURT: I'm not getting any clear indication
22 here. One is talking about decision making, the other is
23 ownership. I'm going to allow you some leeway.

24 MR. OLIVER: Will it be continuing then?

25 THE COURT: Continuing objection.

1 MR. OLIVER: That it's an improper legal standard so
2 the inquiry is irrelevant. Thank you.

3 (The following proceedings continued within the
4 hearing of the jury:)

5 BY MR. STILLEY:

6 Q. Can you tell the jury who would get the assets that are
7 used by Mountain Park if that organization were dissolved?

8 A. It would go to a like ministry.

9 Q. Is that written down somewhere?

10 A. No, sir.

11 Q. Okay. And how do you know that? What's your basis of
12 personal knowledge for that?

13 A. Just that if the ministry dissolved then the assets go
14 to a like ministry.

15 Q. Did somebody tell you that?

16 A. I guess my husband and I discussed it at different
17 times. We've discussed it with our lawyers.

18 Q. Okay. Tell -- can you tell the jury how do you
19 normally refer to the organization at Mountain Park? Do you
20 just call it Mountain Park?

21 A. Mountain Park.

22 Q. Okay. Does Mountain Park refer to the church as well
23 as the boarding academy?

24 A. Mountain Park Baptist Church and the boarding academy
25 is a ministry under the church.

1 Q. Okay. Is there a distinction between the church and
2 the academy?

3 A. What do you mean?

4 Q. Are the books for the church and the academy kept
5 separately?

6 A. No, sir, everything is under the church.

7 Q. So there's one set of books?

8 A. There's one set of books for the bookkeeping.

9 Q. Now, when -- did you remember when Jordan Blair, the
10 plaintiff in this case, came to be at Mountain Park?

11 A. Just from the application. I understand it was October
12 the 24th.

13 Q. Of what year?

14 A. 2001.

15 Q. How many other students were there at that time?

16 A. I have no idea how many students were there back in
17 October 24th, 2001.

18 Q. Can you get close on it?

19 A. I would say probably 70, 80.

20 Q. Was that boys and girls?

21 A. Yes, boys and girls.

22 Q. Were all these paid students or were there any there
23 without tuition from the parents?

24 A. We would have a few that come and could not pay the
25 full amount and we would let the parent pay just part of

1 tuition. And then we would let some parents that had one of
2 the students there would help out sometimes with tuition.

3 Q. Okay. Using the same time frame, how many students
4 were at Palm Lane Baptist Church in Florida?

5 A. Probably about 20 girls.

6 Q. Was it girls only?

7 A. At that time, October 24th, yes, they were girls only.

8 Q. When did it change to girls and boys?

9 A. When we brought Jordan and some other boys down to the
10 ministry, we had some boys and girls there.

11 Q. So Jordan Blair was one of the first boys there?

12 A. No, sir, we had had boys there before and we took them
13 and sent them back to Mountain Park. And then we brought
14 them back down to Palm Lane.

15 Q. Now, let's find out a little bit about the formal
16 organizational structure of Palm Lane. Do you call that Palm
17 Lane?

18 A. Palm Lane Baptist Church.

19 Q. Is that a corporation?

20 A. Yes, that's a corporation.

21 Q. What is the formal corporate name?

22 A. Palm Lane Baptist Church.

23 Q. Incorporated?

24 A. Yes, sir.

25 Q. And how long has this corporation been operating?

1 A. We started it in 1997.

2 Q. Okay.

3 A. I think we bought the property in November 1997.

4 Q. Are these students -- how is Palm Lane and Mountain
5 Park affiliated?

6 A. They are two different ministries.

7 Q. I believe you told us that there were students sent
8 back and forth?

9 A. The reason we sent them back because we were a little
10 short of workers, so we informed the workers that the boys
11 would be going back to Mountain Park so we would have enough
12 workers to take care of them.

13 Q. Who makes the decisions with regard to Palm Lane?

14 A. Brother Wills and I.

15 Q. And anybody else?

16 A. No, sir.

17 Q. Who makes the decisions with respect to Mountain Park?

18 A. Brother Wills and I and Brother Sam Gerhardt.

19 Q. Anybody else?

20 A. No, sir.

21 Q. Who manages the finances at Palm Lane?

22 A. The bookkeeping is all done at Mountain Park.

23 Q. Are all the books then kept together for Palm Lane and
24 Mountain Park?

25 A. No, sir, the banking is done in Florida.

1 Q. But I'm not asking about the banking, but about the
2 books.

3 A. Yes, sir, the books are at Mountain Park.

4 Q. Okay. And they are all kept together; is that correct?

5 A. No, they are not together, they are separate.

6 Q. Okay. So there's two sets of books at the facility at
7 Mountain Park, correct?

8 A. Yes, sir, one for Mountain Park and one for Palm Lane.

9 Q. And who keeps those books?

10 A. Mrs. Gerhardt.

11 Q. Does she keep both sets?

12 A. Yes, sir.

13 Q. Okay. Can you tell the jury the physical location of
14 each of these facilities?

15 A. Mountain Park Baptist Church is located in Patterson,
16 Missouri. Palm Lane Baptist Church is located in Arcadia,
17 Florida.

18 Q. And would it be fair to say then that at the time that
19 Jordan Blair arrived at Mountain Park that there were about
20 100 total students in the two schools?

21 A. I said I wasn't sure, there could have been 100. I
22 said between 70 to 80.

23 Q. Okay. Now, but you also said that there were about 20
24 students at Palm Lane?

25 A. Yes, sir.

1 Q. So it would be fair to say there were 90 to 100
2 students altogether?

3 A. How many?

4 Q. Ninety to 100 students?

5 A. Yes, sir.

6 Q. And what's the rate of tuition at these places?

7 A. 1,200 a month.

8 Q. Both places?

9 A. Yes, sir.

10 Q. Has that changed in the past three years?

11 A. I don't believe so, no, sir.

12 Q. So can you tell the jury what your approximate average
13 annual revenue from these two schools is?

14 A. No, sir, I don't keep up with that.

15 Q. Well, if there were a hundred students, it would be
16 1,200 times 100, correct?

17 A. Yes, sir.

18 Q. And can you tell the jury how much that is?

19 A. Not right off my head, no, sir.

20 Q. Would that be 120,000?

21 A. It could be yes, sir.

22 Q. Times 12 months?

23 A. Well, 12 months.

24 Q. Well, 12 months in a year, correct?

25 A. 12 months, yes.

1 Q. And the parents typically send the kids there all year
2 round, correct?

3 A. Most of them do. Some of them do not, but most of them
4 do.

5 Q. So is it fair to say that the revenue in 2001 was about
6 close to one and a half million dollars per year?

7 A. It could be.

8 Q. And is it true that the revenue -- is the revenue about
9 the same at this point in time?

10 A. I'm sorry?

11 Q. Is the revenue of the two schools about the same at
12 this point in time?

13 A. The same amount of money for both schools.

14 Q. Is it about the same at this point in time?

15 A. They -- each family was charged 1,200 but now Palm Lane
16 only had 20 students where Mountain Park would have 80 to 90
17 students.

18 Q. But are the student numbers still the same at both
19 facilities?

20 A. Right now?

21 Q. Correct.

22 A. No, it isn't.

23 Q. And how have they changed?

24 A. We just haven't had the call for students.

25 Q. About how many students are at Mountain Park right now?

1 A. About 40 something.

2 Q. And how about Palm Lane?

3 A. Palm Lane has 19.

4 Q. Who owns the land that Palm Lane sits on?

5 A. The land is in my name.

6 Q. Who obtains the -- of this \$1.5 million, can you tell
7 us where this money goes?

8 A. Oh, yes, sir, it goes to pay bills and build buildings,
9 pay salaries.

10 Q. Salaries?

11 A. Yes, sir.

12 Q. Who is on salary?

13 A. All of our staff.

14 Q. Can you tell us who they are?

15 A. There's myself and Brother Wills, Brother and
16 Mrs. Gerhardt, Brother Bo and Julie Gerhardt, Ms. Goodman,
17 Brother O'Brient and Ms. O'Brient, Brother Kennedy and
18 Mrs. Kennedy, Andrea Hill, Monica McCombs. Let me think a
19 minute. Sandra Herman, Robin Baldwin. Have several outside
20 staff that work just on the buildings. Mitchell, I'm not
21 sure what his last name is. Billy Fox. We have several
22 cooks that come in every day, Sue Harmon, Barbara -- I can't
23 think of her name right now. Amber "Stoflus". We have
24 Meagan O'Brient is called a junior staff.

25 Q. What is a junior staff?

1 A. Junior staff is one that is still in school but wants
2 to be a worker, so we give her some duties and pay her a
3 little bit of money.

4 Q. Okay. How much does a junior staff worker typically
5 get?

6 MR. BRIGGS: Objection, Your Honor, may we approach?

7 (The following proceedings were held at the bench
8 and outside the hearing of the jury:)

9 THE COURT: I'll sustain the objection. You're
10 going way beyond who would be the employer. Let's stay on
11 this. You know, how much a junior person makes, please.

12 MR. STILLEY: Well, let me explain myself lest you
13 think I didn't have any reason to go there. Last I heard,
14 they were paying \$300 a month, which would indicate that they
15 don't think they are required to comply with Fair Labor
16 Standards. And I'm going to ask to see if they consider
17 themselves, that they are required to pay minimum wage.

18 MR. BRIGGS: May I respond, Your Honor?

19 MR. STILLEY: If he wants to object and then the
20 Court wants to rule on that.

21 THE COURT: Wait a minute. You want to ask who --

22 MR. STILLEY: Want to ask her if they consider
23 themselves subject to the Fair Labor Standards.

24 MR. BRIGGS: Your Honor, my response is this.

25 No. 1, you ruled on this last September 23rd when we had the

1 hearing on discovery. You ruled that he was not entitled to
2 inquire about employee's salaries. Second, Your Honor, he's
3 basing his supposition on the last he heard through the
4 grapevine how much people are making. Third, he has -- if
5 he's going to inquire, I think he has to cover the entire
6 territory as far as room and board, any other expenses that
7 are covered under the plan. And in addition to that, whether
8 these people would waive any exemption rights under the Fair
9 Labor Standards Act.

10 It is our position to come back on that. If he's
11 making an affirmative position on that, I think he has to
12 present evidence on it. And he hasn't offered anything in
13 this lawsuit so far. I don't know where he's going to get it
14 here. I think it's improper for him to inquire about
15 confidential information. He hasn't demonstrated how that
16 junior -- what junior staff members would do would constitute
17 the employer/employee relationship.

18 THE COURT: Well, he's saying he's going toward
19 whether or not they are subject to the Fair Labor Standards
20 Act. Every employer is subject to that. I mean, but you're
21 really getting to whether or not your client, Mr. Blair, is
22 an employee. So I think you're going a little bit too far
23 afield. And we're going way too far afield with how much
24 people are making and whether or not they are subject in
25 terms of those employees. We're not talking about those

1 employees. I thought you were making -- I thought you were
2 making an inquiry to see who the employers, if there is such
3 a thing, who they are.

4 MR. STILLEY: I can get back to the --

5 THE COURT: Let's stay there.

6 MR. BRIGGS: Your Honor, actually while we're here
7 then I still, I want to make this preemptorily. Then I still
8 would object to his inquiry into example how much Mr. and
9 Mrs. Wills make or how much Pastor and Mrs. Gerhardt make. I
10 think that is inappropriate inquiry to determine whether or
11 not they would constitute employers in this case.

12 THE COURT: I don't know what's going to constitute
13 who. But it seems to me that unless there is some other
14 information there, this isn't part of the information there
15 in terms of these people. The defendant is claiming that all
16 of them are the employer. So I'm going to allow that.
17 There's a simple solution, you all don't want to go there, so
18 forget it. Here it is.

19 MR. BRIGGS: Thank you, Judge

20 (The following proceedings continued within the
21 hearing of the jury:)

22 BY MR. STILLEY:

23 Q. How much compensation did you receive from Mountain
24 Park and/or Palm Lane in 2001?

25 A. How much pay did I receive?

1 Q. Correct.

2 A. I'm not sure because I don't receive a salary every
3 month.

4 Q. Okay. Where can we get that information?

5 A. I'd have to look on my income tax.

6 Q. Who is the bookkeeper?

7 A. Mrs. Gerhardt.

8 Q. Okay. Would she have that information?

9 A. She would have it at Mountain Park, yes.

10 Q. Is that Debbie Gerhardt?

11 A. Yes, it is.

12 Q. You said something about having that information at
13 Mountain Park. Are you saying that -- what do you mean by
14 that?

15 A. On the computer at Mountain Park where she keeps our
16 bookkeeping.

17 Q. Okay. You don't think she would know that, have
18 personal knowledge of that information?

19 A. I don't think she would know that, sir.

20 Q. Okay. Are you telling us you don't know how much
21 compensation you got in 2001?

22 A. No, sir. Like I said, I don't receive a salary every
23 month.

24 Q. Is there any year you could tell us how much
25 compensation you received from these two entities?

1 A. I think this last year I received 54,000.

2 Q. I beg your pardon?

3 A. 54,000 this past year.

4 Q. Okay. Would that be 2003?

5 A. Yes.

6 Q. Okay. Would that be commensurate with other years or
7 do you know if that would be roughly similar to other years?

8 A. I may have received a bit more other years.

9 Q. All right. Do you have personal knowledge about how
10 much compensation your husband received from Mountain Park
11 and Palm Lane?

12 A. I think this past year he got 40 something.

13 Q. Do you know about any other years?

14 A. No, sir, not right off I don't.

15 Q. Okay. Now, is that just cash compensation?

16 A. A check.

17 Q. Okay. But does that include -- do you get any housing
18 or other things of value through these two organizations?

19 A. I'm buying my own home in Florida.

20 Q. Okay. And does that come out of the compensation that
21 you receive from --

22 A. Yes, it does.

23 Q. And that comes out of the compensation that you receive
24 from those two organizations, correct?

25 A. I don't receive anything from Palm Lane, I just get

1 money from Mountain Park.

2 Q. Okay. Do you have personal knowledge about the
3 compensation received by any of the other individuals that
4 are parties to this lawsuit?

5 A. I know about how much salary they get, yes, sir.

6 Q. Okay. How about Mr. Gerhardt, Mr. Sam Gerhardt, do you
7 know how much he gets?

8 A. Let's see, 24,000.

9 Q. That's cash?

10 A. Paycheck, yes, sir.

11 Q. Does he also get a house to live in?

12 A. Yes, sir, he has a home to live in.

13 Q. Do you know if he gets any labor to keep up that house?

14 A. Does he get any labor to keep up the house?

15 Q. Right. Is there any labor included in his
16 compensation?

17 A. No, sir. The men that work come in from outside that
18 work for us. Our carpenters do all the labor work on the
19 houses.

20 Q. Okay. Do the students at Mountain Park ever do work?

21 A. Yes, sir.

22 Q. They do work on Sam Gerhardt's house?

23 A. No, sir.

24 Q. Never?

25 A. Work on his house?

1 Q. House or grounds.

2 A. They may sweep around the house. They may pick up
3 limbs. But work on the house, no, sir.

4 Q. Okay. So is it fair to say then they keep the grounds
5 clean?

6 A. Yes, sir.

7 Q. Is it fair to say they keep the inside of the house
8 cleaned?

9 A. Oh, no, sir. The boys?

10 Q. Right.

11 A. You talking about the boys?

12 Q. No, the girls.

13 A. Sometimes the girls may go up there and wash some
14 windows and do things like that, yes, sir.

15 Q. Is that work that they are required to do or is that
16 just voluntary?

17 A. No, sir, that's volunteer.

18 Q. Is there any penalty for not volunteering?

19 A. No, sir.

20 Q. How about -- now, who is Debbie Gerhardt?

21 A. My daughter.

22 Q. Do you know how much her salary is?

23 A. A thousand a month.

24 Q. From both organizations?

25 A. From Mountain Park only.

1 Q. Okay. How much does she get from Palm Lane?

2 A. She doesn't get anything from Palm Lane.

3 Q. Do you know of any nonemployee compensation, noncash
4 compensation that she gets?

5 A. No, sir.

6 Q. Do you know how much compensation Bo Gerhardt gets from
7 these two organizations?

8 A. Mountain Park pays him 1,300 a month.

9 Q. And Julie Gerhardt?

10 A. Their salary is together.

11 Q. Oh, do they only draw one salary between them?

12 A. Together.

13 Q. And can you tell, what is your relationship to Bo and
14 Julie Gerhardt?

15 A. Bo is my grandson.

16 Q. And who is Julie?

17 A. Julie is his wife.

18 Q. Do you know what compensation Drew Parrish received in
19 2001, if any, from these two organizations?

20 A. He got some from Palm Lane and some from Mountain Park.
21 I couldn't tell you exactly what his was.

22 Q. Okay. Do you know how much -- well, let me go through
23 these names and you just tell me. I'm asking you about what
24 compensation they received from either or both of these
25 organizations to see if you have any knowledge about that.

1 Do you have any knowledge concerning Bill Cavitt -- wait,
2 strike that -- Robert O'Brient?

3 A. Yes, sir, he received money from Palm Lane. He
4 receives 1,500 a month.

5 Q. And how about Robert Kennedy?

6 A. Brother Kennedy gets his salary from Palm Lane, and his
7 is 1,300 a month.

8 Q. Is there any profit derived from these -- either of
9 these two organizations, any cash profit at the end of the
10 year?

11 A. Derived?

12 Q. Right. Do these businesses turn a profit?

13 MR. OLIVER: Object to the characterization.

14 THE COURT: Overruled.

15 A. No, sir. You talking about a profit from some
16 business?

17 Q. Well, I'm just asking if there is a profit. After all
18 the expenses have been paid, is there none left over?

19 A. There may be a little bit.

20 Q. Okay. Let's take 2001, do you know about how much was
21 left over for that year?

22 A. No, sir, I do not.

23 Q. Do you know who would know?

24 A. Mrs. Gerhardt.

25 Q. Do you have any personal knowledge about why Jordan

1 Blair was sent from Mountain Park to Palm Lane shortly after
2 he arrived at Mountain Park?

3 A. Yes, sir, I do.

4 Q. Okay. What's your understanding of those reasons?

5 A. In the State of Missouri at 17 a child is considered
6 legal age. In Florida they have to be 18. And Jordan Blair
7 would've been with us only a few months when he turned 17, so
8 that's why we took him to Florida. We told his parents he
9 would have to go to Florida if we took the child.

10 Q. What would have been wrong with leaving him at Mountain
11 Park? Would he been able to leave the facility within just a
12 few months?

13 MR. OLIVER: Objection, this is outside the scope.

14 THE COURT: Where we going? Sustained.

15 BY MR. STILLEY:

16 Q. Do you have any personal knowledge as to whether there
17 were any signed documents from Jordan Blair's parents
18 authorizing that he be transferred to Palm Lane?

19 THE COURT: Sustained. We're going to focus on the
20 two claims; battery, employer/employee, okay.

21 MR. STILLEY: Certainly, Judge. Certainly.

22 THE COURT: Fine.

23 Q. Do you have any personal knowledge as to whether there
24 are any time records kept on students who perform work at
25 either of these facilities?

1 A. No, sir, these are just chores that the students
2 perform, there is no time record.

3 Q. What about you talked about junior staff?

4 A. Yes, sir.

5 Q. Are time records kept on junior staff?

6 A. No, sir.

7 Q. Is there a particular reason for that?

8 A. We just don't have a time record on none of the
9 employees except the outside that come in.

10 Q. Can you define or explain to the jury what the -- what
11 the principle function of Mountain Park Boarding Academy is?

12 A. The principle function?

13 Q. Correct.

14 A. Is to take a child that is having problems and tell
15 them about Jesus and get him an education and try to get his
16 life turned around so he can walk into society and live and
17 work among others without trouble.

18 Q. Isn't it true that Mountain Park in its own literature
19 says -- Mountain Park Baptist Boarding Academy says that it
20 is nothing more than the name implies?

21 A. A boarding academy?

22 Q. Correct.

23 A. It's a boarding academy, yes, sir.

24 Q. Is the academy then providing education for students?

25 A. Yes, sir.

1 Q. Is this academic education?

2 A. Yes, sir.

3 Q. And for what grade levels?

4 A. All grade levels. We take them from -- we start 12, 13
5 years old and take them up to 17 in Missouri and then 18 in
6 Florida.

7 Q. Where do the majority of your students come from as to
8 what state?

9 A. All over.

10 Q. About what percentage of your students come from the
11 state in which the academy is located?

12 A. Not very many.

13 Q. Okay. How does the personnel of Mountain Park and Palm
14 Lane communicate with the parents that are outside their
15 state?

16 MR. OLIVER: Your Honor, does this have something to
17 do with this case? Objection, irrelevant.

18 MR. STILLEY: Your Honor, interstate commerce. Can
19 we approach on this?

20 THE COURT: I'm sustaining that objection.

21 MR. STILLEY: Your Honor, may I approach anyway? I
22 want to make sure. I have some other things I want to
23 approach on.

24 (The following proceedings were held at the bench
25 and outside the hearing of the jury:)

1 MR. STILLEY: Your Honor, I think this is an
2 appropriate time to see if maybe we can streamline this a
3 little bit.

4 THE COURT: I'm telling you.

5 MR. STILLEY: I'm trying to -- I'm taking a belt and
6 suspenders approach because I've learned that sometimes it's
7 a good idea to do. Let me explain what I'm trying to do.
8 I'm trying to prove the interstate commerce tag to hold them
9 liable under Fair Labor Standards. There is also a provision
10 of the law that says that all schools, all schools, primary
11 and secondary education schools, are covered by Fair Labor
12 Standards Act. Now, if they would either agree with that or
13 I could have a ruling that they are covered, and I can bring
14 you the law and let you take a look at it, and then I would
15 not feel obliged to try to establish this alternate route.

16 THE COURT: What do you have to say about this,
17 Mr. Briggs?

18 MR. BRIGGS: Well --

19 THE COURT: You need some help?

20 MR. BRIGGS: No. Actually, Your Honor, under the
21 Act it has been found that certain educational institutions
22 will qualify. My recollection is that the Act does not say
23 every single educational institution qualifies as an employer
24 under the Act. I wouldn't -- I think it's inappropriate that
25 at this point we wouldn't stipulate to that, but moreover

1 taking this back road approach, or bootstrapping approach to
2 try to prove interstate commerce is inappropriate in this
3 case. Where the students came from to be enrolled in
4 Mountain Park doesn't create interstate commerce in itself.

5 THE COURT: His questions were talking about
6 communicating with each other and the parents. That's what
7 he was inquiring about.

8 MR. OLIVER: Obviously they communicated in
9 interstate commerce if they are from out of state. If he's
10 going where you -- I objected because he's going where you
11 barred him from going just like he has been during this
12 entire examination. I don't care where the students come
13 from. I'd be glad to stipulate that they write letters, put
14 them in the mail that go in interstate commerce.

15 THE COURT: Fine. Make the stipulation, then you
16 all move on. You got that?

17 MR. STILLEY: I don't have a problem with it. What
18 I want to do is establish not only do that, they take the
19 kids, and I think we can stipulate to this too, that they
20 take these kids from Missouri to Florida which crosses a
21 state line.

22 MR. OLIVER: I think she already testified to that.

23 THE COURT: What are you trying to do?

24 MR. STILLEY: I'm trying to cover all the bases,
25 that I make sure --

1 THE COURT: He said he's going to stipulate to
2 interstate commerce. What more do you need?

3 MR. STILLEY: If he stipulates to interstate
4 commerce on this association, I'm happy.

5 MR. OLIVER: No, no, no. I'm not trying to be at
6 odds with the Court, but I'm willing to stipulate and she's
7 already testified that students were moved from Mountain Park
8 to Palm Lane. We agree that was in interstate commerce. We
9 agree that parents communicate from other states in to
10 Missouri and from Missouri and that children communicate from
11 Missouri to other states. We agree that children communicate
12 from Palm Lane to other states and that parents communicate
13 with children from other states to Palm Lane in Florida.
14 This isn't a dispute in this case. The letters prove that
15 that are already in evidence.

16 THE COURT: So what mode are you on?

17 MR. STILLEY: If they want to stipulate that they
18 are involved in interstate commerce, what I want to do is go
19 the next route to find out where they get the goods. They
20 transport goods across the state line to their facility.

21 MR. OLIVER: Mr. Stilley has a perverted view of
22 what the law is in this case. The question is whether or not
23 they produce goods in interstate or are an enterprise that
24 produces goods in interstate commerce, that's the exact
25 question in this case.

1 MR. STILLEY: No, there is two things, there is
2 interstate and there is production of goods for interstate
3 commerce. And they are vastly different concepts. And I
4 know that they don't produce goods in the sense of a factory
5 that produces goods in interstate commerce. That's fine.
6 The question that I am trying to prove here or the
7 proposition is that they engage in interstate commerce. But,
8 like I said, if we could just get a stipulation that they are
9 a school as defined by the code section, and if we need to
10 get it, I can get it and show it to you.

11 MR. OLIVER: We don't agree they are that.

12 MR. STILLEY: Well, that leaves all these things in
13 evidence. And I think that I should be allowed to --

14 THE COURT: Well, if you all do have some partial
15 stipulation, let's put that on. And otherwise I'm going with
16 the evidence on interstate commerce. I'm going to let you do
17 it, okay.

18 MR. STILLEY: Do you want us to take a little bit of
19 time to work on that?

20 MR. OLIVER: Could I give this to Mrs. Wills?

21 MR. STILLEY: You want us to take a break and work
22 on that?

23 THE COURT: No. He don't need a break. He said it
24 all up here. He could get up here and say it. Since you
25 don't play golf, you don't understand. Mr. Briggs plays a

1 little golf, don't you, Mr. Briggs?

2 MR. BRIGGS: Yes, sir.

3 THE COURT: He understands what Lee Trevino said.
4 You know what Lee Trevino told the amateur, have you heard
5 this before?

6 MR. BRIGGS: I haven't, Judge.

7 THE COURT: This amateur golfer, you know, an
8 amateur is not like a professional, he's playing with Lee.
9 And he asks Lee, "How should I hit this ball?" And Lee said,
10 "Miss it quick." You see what I'm saying, that's what I'm
11 talking about, so miss it quick. I haven't got all day.

12 MR. BRIGGS: Thank you, Judge.

13 (The following proceedings continued within the
14 hearing of the jury:)

15 MR. OLIVER: Your Honor, if it saves any time, the
16 defense is willing to stipulate and agree that from time to
17 time children from states other than Missouri registered and
18 enrolled in Mountain Park and come to Missouri from other
19 states. And from time to time as testified to by Mrs. Wills
20 those students, males have been moved with the permission of
21 their parents to Florida, to Palm Lane. And from time to
22 time students at Palm Lane with the permission of their
23 parents, which is in Florida, have been moved to Missouri.
24 That in both schools parents communicate from states other
25 than Missouri and Florida with the students and as shown by

1 the evidence that we've already agreed to the 19 or 28
2 letters, that the students communicate with their parents in
3 states other than Missouri. In Florida, for instance, Jordan
4 Blair writes letters to his parents. There are 28 of them in
5 evidence. Patients write letters to Jordan Blair both at
6 Palm Lane and Mountain Park as the case may be.

7 THE COURT: Very well.

8 MR. STILLEY: Thank you, Judge.

9 BY MR. STILLEY:

10 Q. Do you have any personal knowledge as to whether
11 Mountain Park purchases goods that have been transported in
12 interstate commerce?

13 A. No, sir.

14 Q. You have no personal knowledge one way or the other?

15 A. No, sir.

16 Q. How about Palm Lane?

17 A. No, sir.

18 MR. STILLEY: Your Honor, could I have a moment with
19 my client?

20 THE COURT: Sure.

21 MR. STILLEY: Thank you.

22 Q. Does Mountain Park have official tax exempt status?

23 MR. OLIVER: Objection, Your Honor, churches aren't
24 required to have tax exempt status under IRS 506c.

25 THE COURT: Overruled. You may inquire.

1 BY MR. STILLEY:

2 Q. Do you recall the question?

3 A. Say it again, please.

4 Q. Okay. Does Mountain Park have official tax exempt
5 status from the IRS?

6 A. Mountain Park Baptist Church has a tax exempt.

7 Q. And when did the IRS award that status?

8 A. When did it what?

9 Q. When was this status approved by the IRS?

10 A. Probably in the year '88 or '89.

11 Q. Do you have personal knowledge of that?

12 A. No, sir -- well, I'm talking about a tax exempt letter
13 stating the church is tax exempt.

14 Q. Right.

15 A. Uh-huh.

16 Q. Is that what you're talking about?

17 A. Yes.

18 Q. You did get that letter?

19 A. Yes.

20 Q. How about Palm Lane Academy, does it have the same
21 status?

22 A. Tax exempt, yes, sir.

23 Q. Do you remember when that status was achieved?

24 A. Probably about two years ago.

25 Q. Do you know why it took -- that Palm Lane was started

1 in '97; is that correct?

2 A. We bought the property in '97, yes. The students we
3 didn't start taking until 2000.

4 Q. Do you know the reason that the exemption letter wasn't
5 gotten until a couple years ago?

6 A. Probably because my husband had had a heart attack and
7 he was just kind of slow in getting it going after his heart
8 attack.

9 Q. Do each of these organizations file tax returns as tax
10 exempt organizations?

11 MR. OLIVER: Your Honor, I object. He's asking
12 questions he knows the law doesn't require them to do.
13 You've already ruled this on September 23rd, 1993 (sic).

14 MR. STILLEY: I'm just trying to find out -- she
15 testified they had tax exempt status. I'm wanting to see if
16 they got that as a church.

17 THE COURT: Why? Curiosity sake.

18 MR. STILLEY: I think it goes to some of the issues
19 in this case about their claims of simply being -- trying to
20 help kids as opposed to being a profit enterprise.

21 THE COURT: I'm sustaining that.

22 BY MR. STILLEY:

23 Q. Do either of these organizations engage in any
24 political activities or support any political candidates?

25 MR. OLIVER: Objection.

1 THE COURT: Sustained. You've got to focus on these
2 two issues here; battery and employer/employee relationship.
3 If something goes to show someone was an employer or not an
4 employer under the Fair Labor Standards, then that's fair
5 game. Or, you know, the kinds of activity that go on in
6 terms of work, whatever else. But please.

7 MR. STILLEY: As a matter of fact, I'm ready to pass
8 this witness.

9 MR. OLIVER: May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. OLIVER:

12 Q. Mrs. Wills, when was Mountain Park established?

13 A. 1987.

14 Q. And let me show you from what's been marked for
15 identification as Defendant's Exhibit 9 a statement of the
16 purpose. Is that accurate? Tell the ladies and gentlemen of
17 the jury whether that fairly and accurately sets forth the
18 purpose of Mountain Park?

19 A. Yes, it does.

20 Q. Now, from that day forward has the purpose of Mountain
21 Park changed?

22 A. No, it hasn't.

23 Q. And when did you and Pastor Wills establish Palm Lane?

24 A. In 1997.

25 Q. From 1987 to 1997 who ran Palm Lane?

1 A. Brother Wills and I did.

2 Q. Okay. And how did Brother Gerhardt get involved?

3 A. In the year 1993 Brother and Mrs. Gerhardt came to work
4 with us.

5 Q. And who told Brother Sam what to do?

6 A. Brother Wills.

7 Q. Who tells Brother Sam what to do now?

8 A. Brother Wills.

9 Q. And occasionally maybe Mrs. Wills?

10 A. Yes, sir.

11 Q. Who are the decision makers or who were the decision
12 makers in 2001 at Mountain Park? Who made the decisions?
13 Start with policy decisions.

14 A. Brothers Wills.

15 Q. Who was involved in the hiring and the firing?

16 A. Brother Wills.

17 Q. All right. Who had input into that?

18 A. Brother Sam and I.

19 Q. Who controlled the manner by which your staff behaved
20 themselves and set policy for staff behavior?

21 A. Brother Wills.

22 Q. And who had input into that?

23 A. Brother Sam and I.

24 Q. Anybody else?

25 A. No, sir.

1 Q. Now, from time to time I assume that employees -- when
2 I say staff wages were set, correct?

3 A. Yes, sir.

4 Q. And who set those wages?

5 A. Brother Wills.

6 Q. And who had input into that?

7 A. I did.

8 Q. All right. What about Brother Gerhardt, did Sam have
9 input?

10 A. Mostly Brother Wills and I.

11 Q. Now, when I say staff, we're talking about everybody
12 that's been sued, right? You have inside staff, correct?

13 A. Yes, sir.

14 Q. And then tell the jury what this outside staff is that
15 you've referred to.

16 A. These are hourly wage people that come in and do
17 outside work; building, cooking, things like that.

18 Q. All right. Those people that -- you have cooks, people
19 that cook?

20 A. Yes, sir.

21 Q. Do you have people that work in yards?

22 A. Yes, sir.

23 Q. People that do mechanic work and things like that?

24 A. Yes, sir.

25 Q. Who hires and fires those people at Mountain Park?

1 A. Brother Wills and I.

2 Q. Okay. And who sets their wages and hours of
3 employment?

4 A. Brother Wills.

5 Q. All right. And who sets the job requirements?

6 A. Brother Wills.

7 Q. Okay. Now, in Mountain -- at Mountain Park are
8 financial records kept?

9 A. Yes, sir.

10 Q. And who keeps those records?

11 A. Mrs. Gerhardt.

12 Q. And where does Mountain Park bank, what state?

13 A. Missouri.

14 Q. And does it have its own set of books?

15 A. Yes, sir.

16 Q. Now, you made reference to a tax exempt letter,
17 correct?

18 A. Yes, sir.

19 Q. And that's a letter you received from the State of
20 Missouri that says you don't have to pay sales tax, correct?

21 A. Yes, sir.

22 Q. That letter has been issued to you by the State, right?

23 A. Yes, sir.

24 Q. Now, at Mountain Park, are the operations of Mountain
25 Park kept separate from the operations of Palm Lane?

1 A. Yes, sir.

2 Q. All right. Now, there is a newsletter, correct?

3 A. Yes, sir.

4 Q. What's the name of the newsletter?

5 A. Mountain Park Update.

6 Q. And is Palm Lane news published in that newsletter?

7 A. Yes, sir.

8 Q. Why?

9 A. Because Palm Lane can't afford its own newsletter.

10 Q. Does Mountain Park when they graduate have a
11 graduation?

12 A. Yes, sir.

13 Q. And do you publish some kind of yearbook?

14 A. Yes, sir.

15 Q. And are Palm Lane students in that yearbook?

16 A. Yes, sir.

17 Q. And why is that?

18 A. Because they can't afford their own yearbook.

19 Q. Now, when you say that, who are you talking about?

20 A. The students at Palm Lane.

21 Q. Now, let's talk about Palm Lane. Palm Lane was
22 established in what year?

23 A. 1997.

24 Q. It's a corporation, correct?

25 A. Yes, sir.

1 Q. And it's located where, in Arcadia, Florida?

2 A. Yes, sir.

3 Q. Has about 19 or 20 girls?

4 A. Has 19.

5 Q. Currently the maximum number of girls down there is how
6 many?

7 A. Currently it's about 40.

8 Q. That would be the maximum you could take?

9 A. Yes, sir.

10 Q. How many boys?

11 A. We don't have any boys right now.

12 Q. All right. Now, in 1997 why did you and Pastor Wills
13 start Palm Lane?

14 A. Because we felt like that there was some teenagers that
15 when they turned 17 they still needed help. And in Missouri
16 at 17 if they wanted to leave they could leave. And we were
17 wanting to help them more so we went down to Florida and
18 opened up Palm Lane.

19 Q. And this would give you --

20 A. -- another year with them.

21 Q. When you say teenagers or troubled teenagers, tell the
22 ladies and gentlemen of the jury what kind of audience your
23 ministry is aimed at Mountain Park's ministry?

24 A. Young people that are in trouble, rebellious, runaways.

25 Q. What do you mean by trouble? Trouble is a cop-out.

1 What is trouble?

2 A. They don't want to obey their parents. They don't want
3 to go to school, they want to do drugs, sex, everything that
4 goes along with rebellious teenager.

5 Q. And is that your audience, the parents of those
6 children? Is that who these ministries are directed to?

7 A. Yes, sir.

8 Q. Mountain Park has a church, correct?

9 A. Yes, sir.

10 Q. And what -- how is the boarding academy related to that
11 church?

12 A. It's a ministry of the church.

13 Q. And that ministry is to do what?

14 A. Help young people, give them an education, tell them
15 about Jesus. Have them go into the world and live a normal
16 life among other people. Not cause trouble. Get a good
17 education. Many of them go to college, are married to
18 preachers or become preachers. Just a wonderful life they
19 have after they accept Jesus. And we want to turn their
20 lives around.

21 Q. How rigid or structured is Mountain Park?

22 A. Very structured.

23 Q. How rigid or structured is Palm Lane?

24 A. Very structured.

25 MR. OLIVER: Mr. Stilley, if you give me your

1 Exhibits 40 and 41, please.

2 Q. Here -- these are some pictures taken off a web site.
3 What are these pictures showing?

4 A. Girls playing.

5 Q. That's at Palm Lane, right?

6 A. Yes, sir.

7 Q. There's a fence there. What's the purpose of the
8 fence?

9 A. To keep the girls from running away.

10 Q. What does it do in terms of their safety from things
11 from the outside?

12 A. It keeps them safe.

13 Q. There's another picture. Is that the same kind of
14 thing?

15 A. Yes, sir.

16 Q. At Palm Lane you see this fence. Where are the boys
17 located?

18 A. On the other side of the dorm.

19 Q. On the other side --

20 A. Of the house where the school is and where the dining
21 hall is, the boys are located on the other side of the fence.

22 Q. On the other side of the fence?

23 A. Right.

24 Q. The fence keeps the boys out too?

25 A. Yes, sir.

1 Q. Now, at Palm Lane, do you have specific rules of
2 conduct and discipline?

3 A. Yes, sir.

4 Q. Okay. Let me show you from -- see if I'm bright enough
5 to put this right side up. In your literature you list
6 specific kinds of rules that are expected, correct?

7 A. Yes, sir.

8 Q. Are those rules -- describe those rules or characterize
9 them. Are they relaxed?

10 A. No, sir.

11 Q. Is it fair to say they are rigid?

12 A. Yes, sir.

13 Q. Are they strict?

14 A. Yes, sir.

15 Q. Are they strictly -- or do you try to strictly comply
16 with them or ask students to strictly comply with them?

17 A. Yes, sir.

18 Q. What do your rules say about violent conduct? If you
19 look.

20 A. Well, will not be permitted.

21 Q. Disorderly conduct, is that permitted?

22 A. No, sir.

23 Q. All right. Is there literally a rule, literally a rule
24 for most everything?

25 A. Yes, sir.

1 Q. In Exhibit 9, which is the yearbook that Mr. Stilley
2 chose, look at page 19. Does the personal attitude statement
3 pretty well express the philosophy of Mountain Park about how
4 these students are to behave?

5 A. Yes, sir.

6 Q. Do you have a discipline policy at Mountain Park?

7 A. Yes, sir.

8 Q. It says the discipline policy has the goal of giving
9 each student maximum opportunity for self-discipline. How do
10 you do that?

11 A. Peer pressure.

12 Q. Do they have opportunities for correction?

13 A. Yes, sir.

14 Q. Okay. And do they have a list of infractions that end
15 up being sort of the rules of the road?

16 A. Yes, sir.

17 Q. And how do students get to know these rules?

18 A. They are told these rules for school; no cheating, no
19 lying, no --

20 Q. And at the same time that you're enforcing those rules,
21 what's Mountain Park and Palm Lane's position about their
22 personal maintenance and maintenance of the areas in which
23 they live?

24 A. Must be clean.

25 Q. You have this policy, if you look at page 31 of that

1 handbook, every student, for every student the basic, very
2 basic of Christian character development begin with the
3 responsibility to maintain their personal and common areas.
4 Is that part of the philosophy?

5 A. Yes, sir.

6 Q. And how do the students do that? Do they have to work
7 to do that?

8 A. Yes, sir.

9 Q. And what do they do?

10 A. They have to clean the toilets. They have to clean
11 their laundry. They have to clean their sinks. They have to
12 clean around their bed. They have to make their own bed.
13 They have to wash their own sheets.

14 Q. Now, explain to the jury what form this cleaning takes.
15 One person doesn't go wash just his sheets, do they?

16 A. Oh, no, sir. They have -- every two weeks we change
17 their duties. There will be a group that does the laundry, a
18 group that does the cleaning of the bathrooms, a group that
19 does the vacuuming, a group that does the different chores
20 that we have.

21 Q. Are those called teams?

22 A. Yes, sir.

23 Q. And who are the team -- are there team leaders?

24 A. Yes, sir.

25 Q. And where do those team leaders come from?

1 A. They are students that have been with us for awhile and
2 they show there's been a change in their life and they want
3 to do what's right and they want to help others.

4 Q. Now, as the students develop, do they also go to
5 school?

6 A. Yes, sir.

7 Q. And at both schools, do you -- what kind of academics
8 do you use?

9 A. School of Tomorrow.

10 Q. That's a Christian school, correct?

11 A. Yes, sir.

12 Q. Now, in the handbook you also in addition to explaining
13 how that works, you make reference to Landmark Freedom
14 Baptist curriculum. What's that?

15 A. It's a bible curriculum.

16 Q. And why is that taught?

17 A. To teach them the bible.

18 Q. And is that integrated with the academic program?

19 A. Yes, sir.

20 Q. And then it says BEKA curriculum. It says this
21 material is prepared, distributed through Pensacola Christian
22 College?

23 A. Video classes.

24 Q. And is that for that advanced education?

25 A. No, sir, it's like Spanish, stuff like that that high

1 school students have to have.

2 Q. So it allows you to have a complete curriculum in
3 Florida and Missouri?

4 A. Yes, sir.

5 Q. Now, Mr. Stilley's asked you a lot of things about who
6 got what and things of that nature. You and Pastor Wills
7 take any salary from Palm Lane?

8 A. No, sir.

9 Q. Do you take salary from Mountain Park?

10 A. Yes, sir.

11 Q. When do you take salary from Mountain Park?

12 A. When they have the money.

13 Q. That's not all the time, is it?

14 A. No, sir.

15 Q. And the other staff members, inside staff are paid, are
16 they not?

17 A. Yes, sir.

18 Q. And some of them, are their houses on Mountain Park?

19 A. Yes, sir.

20 Q. Some of them have houses to live in, correct?

21 A. Yes, sir.

22 Q. Now, Mountain Park own those houses or those people?

23 A. Mountain Park.

24 Q. Now, you indicated that from time to time in addition
25 to cleaning that we've discussed, students are obligated to

1 do other chores. How does that work?

2 A. Sometimes when -- like at my house I have a house at
3 Mountain Park when I'm up there. And the girls will beg me
4 to let them come over and wash my windows or sweep my porches
5 off or things like this. They can do chores like that, it's
6 only voluntary like that.

7 Q. And in the afternoon, let's take the boys, in the
8 afternoon do the boys have a work or play period?

9 A. Sometimes they work and sometimes they play.

10 Q. What makes the difference?

11 A. It's according to how much work has to be done.

12 Q. What's the purpose of the work?

13 A. To teach them to work.

14 Q. Is that part of your philosophy of restoring basic life
15 skills so they can reintegrate in the community?

16 A. Yes, sir.

17 Q. Part of the educational process?

18 A. Yes, sir.

19 Q. Now, does anybody derive any money benefit from that?

20 A. No, sir.

21 Q. I mean, these kids, you don't run them around town and
22 have them stack firewood for other people, right?

23 A. No, sir.

24 Q. Does Mountain Park or Palm Lane make anything for sale?

25 A. No, sir.

1 Q. You buy and repair equipment or anything like that for
2 resale?

3 A. No, sir.

4 Q. Do you make anything that you sell?

5 A. No, sir.

6 Q. You run any cows or horses or anything like that at
7 Mountain Park?

8 A. No, sir.

9 Q. What about at Palm Lane?

10 A. No, sir.

11 Q. You engaged in any business other than saving of the
12 souls?

13 A. No, sir.

14 Q. Any business other than trying to bring these troubled
15 youth to the Lord?

16 A. No, sir.

17 MR. OLIVER: No further questions, Your Honor.

18 THE COURT: Any redirect?

19 MR. STILLEY: Yes, Your Honor, briefly.

20 REDIRECT EXAMINATION

21 BY MR. STILLEY:

22 Q. Is there a particular reason on this barbed wire fence
23 that there's barbs sticking out both directions?

24 A. I said it was for the safety to keep the girls in.

25 Q. Is it to keep -- but if the barbs were going both

1 directions, you're trying to keep people from either coming
2 in or going out; isn't that correct?

3 A. Yes, sir.

4 Q. How tall is that fence?

5 A. I'd say eight feet I guess. I wouldn't know exactly.
6 It's probably more than that. I don't know.

7 Q. Do the kids ever get out of that fence?

8 A. Have they every gotten out?

9 Q. Yes.

10 A. Mountain Park they have, yes, sir.

11 Q. How about Palm Lane?

12 A. No, sir.

13 Q. You said something about peer pressure?

14 A. Uh-huh.

15 Q. What do you mean when you say peer pressure?

16 A. You have good peer pressure and you have bad peer
17 pressure. You put kids with kids that want to do good and
18 you're going to do good. You put kids with people that want
19 to do bad and they are going to do bad.

20 Q. Is that what you mean by peer pressure?

21 A. That's peer pressure.

22 Q. Now, you talked about a written set of rules; isn't
23 that correct?

24 A. In our handbook, yes, sir.

25 Q. Correct. But the kids don't get a copy of that, do

1 they?

2 A. No, sir, but their parents do.

3 Q. Now, you said that the kids sometimes came and did work
4 for you but they begged to come and work for you; is that
5 correct?

6 A. Yes, sir.

7 Q. Have they ever come and worked for you when they
8 weren't begging or asking you to do that?

9 A. No, sir, they are asked do they want to do that.

10 Q. Are there any negative consequences for not wanting to
11 do that?

12 A. Oh, no, sir.

13 Q. How about cows at Palm Lane, do you have any cows at
14 Palm Lane?

15 A. There are cows at Palm Lane, but they don't belong to
16 us, they belong to Mr. -- I can't think of his name right
17 now, the man that is using our land to produce cows on.

18 Q. Do you lease your land, your pasture land to this
19 gentleman?

20 A. No, sir.

21 Q. What is the arrangement that you have between Palm Lane
22 and the gentleman that has the cows?

23 A. Verbal.

24 Q. Okay. What's the terms?

25 A. He can just use our property.

1 Q. No charge?

2 A. No charge.

3 Q. Do you do any upkeep on the pastures?

4 A. No, sir.

5 Q. Do the kids have to do any upkeep on the pastures?

6 A. No, sir.

7 Q. You positive about that?

8 A. Yes, sir.

9 MR. STILLEY: Pass the witness.

10 MR. OLIVER: Nothing further, Your Honor. May she
11 step down?

12 THE COURT: Very well. Thank you, Ms. Wills. You
13 may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Ladies and gentlemen of the jury, we'll
16 take our afternoon recess at this time. Recall the
17 admonition. Be prepared to return to the courtroom at ten
18 minutes of four. We'll be out of here by five. Recall the
19 admonition.

20 (Court in recess from 3:28 p.m. until 3:55 p.m.)

21 THE COURT: Good afternoon again, ladies and
22 gentlemen of the jury. Shall we continue, Mr. Stilley. Go
23 ahead. Call your next witness.

24 MR. STILLEY: Call plaintiff, Jordan Blair.

25 THE COURT: Very well.

1 JORDAN BLAIR,

2 Having been first duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MR. STILLEY:

6 Q. Please state your name.

7 A. Jordan Michael Blair.

8 Q. And you come from Arkansas; is that correct?

9 A. Yes, sir.

10 Q. Where were you born?

11 A. In Fort Smith, Arkansas.

12 Q. And where were you raised?

13 A. In Crawford County, Alma, Arkansas.

14 Q. Okay. And where did you go to school in the early
15 years, first through sixth?

16 A. First through sixth, Alma public schools.

17 Q. Okay. Where did you go -- when you got on into high
18 school, where did you go to high school at?

19 A. I attended Miami public schools in Oklahoma. I
20 attended Alma public schools. And I also attended
21 International Academy of Christian Education.

22 Q. Okay. Can you tell us the dates for each of those?

23 A. Yes, sir. Let's see, the year 2000 was the year I went
24 to -- no, 1999 was the year I finished my ninth grade year.
25 The year 2000 I went to Miami public schools. And then in

1 the end of 2000 towards the start of 2001 I attended
2 International Academy of Christian Education.

3 Q. Okay. When you were going to Alma public schools, did
4 you have some sort of sports or hobbies that you engaged in?

5 A. Yes, sir.

6 Q. And what were they?

7 A. I was a member of the band. I was a member of the
8 football team. I ran track. And that was about it.

9 Q. Did you enjoy the football?

10 A. Excuse me?

11 Q. Did you enjoy playing football?

12 A. Absolutely.

13 Q. How long did you play football?

14 A. I started playing football since fourth grade.

15 Q. What positions did you play?

16 A. Tailback on offense, and on defense I played
17 linebacker.

18 Q. What kind of grades did you have while you were playing
19 football?

20 A. 3.5, 3 point.

21 Q. Okay. And when you were at the Christian school, tell
22 us about that experience. Tell us where you started in the
23 Christian school. Let's start with that.

24 A. Well, my brother had gotten into some trouble and the
25 public schools wouldn't allow him to continue on in their

1 school system. So as an alternative my parents went ahead
2 and enrolled all of us, all of my brothers into a Christian
3 school. I then started there and finished the end of my
4 sophomore year and junior and senior year of high school.

5 Q. Did you complete the courses of education for that
6 program?

7 A. Yes, sir.

8 Q. And when did you complete that?

9 A. In 2001.

10 Q. About what time?

11 A. October.

12 Q. Okay. Now, we're going to skip forward to this a
13 little bit later, but did -- when you came to Mountain Park,
14 did Mountain Park realize that you had completed the
15 requirements for high school?

16 MR. BRIGGS: Objection, Your Honor.

17 THE COURT: What's the purpose?

18 MR. STILLEY: I just asked if they were aware that
19 he had completed the requirements.

20 THE COURT: If who? Sustained.

21 BY MR. STILLEY:

22 Q. Okay. And had you had any paid employment prior to
23 October of 2001?

24 A. Yes, sir.

25 Q. And can you tell us about that?

1 A. I worked construction for Rick Parker Construction.
2 When I was -- I started doing that when I was 15. I did that
3 for a little over a month. And I've also worked for the
4 school that I attended, the IAC, which is the abbreviation
5 for the International Academy of Christian Education. I got
6 paid \$6 an hour for the job that I had at IAC. And I was
7 paid \$8 an hour for the construction work.

8 Q. Okay. Did you leave those jobs on good terms?

9 A. Yes, sir.

10 Q. Now, you've told us about band and football. Were --
11 both of those were school sports, correct?

12 A. School activities.

13 Q. School activities, beg your pardon. Were you
14 engaged -- involved in any other sports outside of school?

15 A. Just playing around with my brothers or church
16 activities, that sort of thing.

17 Q. Did you have some church activities that were exercise
18 related?

19 A. Yes, sir.

20 Q. And what was that?

21 A. Volleyball, we played baseball, things of that nature.

22 Q. Anything else?

23 A. That's all I can think of as of now.

24 Q. What is your religious background?

25 A. I grew up in a nondenominational home, Christian home.

1 We went to a nondenominational church. And that's basically
2 what I grew up in.

3 Q. Were you comfortable with that?

4 A. Yes, sir, at the time.

5 Q. Did you have friends at church that you did activities
6 with?

7 A. Yes, sir.

8 Q. Now, what was the date that you were taken to Mountain
9 Park?

10 A. October 24th, 2001.

11 Q. Okay. Can you tell us what happened? Who did you
12 first meet when you got there?

13 A. Drew Parrish and Matt Elmore.

14 Q. Did you know what to expect when you arrived there?

15 A. No, sir.

16 Q. What did they do with you at that point in time?

17 A. Well, first I had to have the handcuffs taken off of
18 me, so that was done. Then Drew Parrish led me into the
19 boys' dorm. Well, actually I had said hi to him or something
20 like that and I didn't call him or I didn't say yes, sir to
21 him, so he corrected me for that. Then he -- I was taken to
22 the boys' dorm. And the door was sealed tight behind me and
23 a bed moved in front of it. So then I was being pushed into
24 the hallway through the boys' dorm where I encountered three
25 or four other individuals, Matt Elmore was one of those,

1 Jason Lowe, Drew Parrish, and I think that was it at that
2 time.

3 Q. Okay. Did these individuals take you somewhere?

4 A. I was -- well, I met them in the bathroom sink
5 through -- the staff had a little room right adjacent from
6 the bathroom facilities. So it was right in there, in that
7 hallway.

8 Q. Okay. What happened -- did they ask you to do
9 something at that point in time?

10 A. I was told to remove all my clothing and to -- well,
11 first what I had said to them was I had wanted to file a
12 defense petition, a family in need of services petition. I
13 was being abused --

14 MR. BRIGGS: I'll object at this point.

15 THE COURT: Where are we going?

16 MR. STILLEY: Your Honor, I was just trying to take
17 him through the chain of events when he first got there.

18 THE COURT: Well, some chains of events you may need
19 to skip.

20 MR. BRIGGS: Your Honor, I'll ask you to instruct
21 the jury to disregard the testimony.

22 MR. STILLEY: Your Honor, can we approach on this?

23 THE COURT: No, the jury will disregard his last
24 statement.

25 BY MR. STILLEY:

1 Q. Well, don't say anything -- can you tell us what
2 happened after that?

3 A. Bo Gerhardt then came from the downstairs area.

4 Q. Is that the first time that you had seen Bo Gerhardt?

5 A. Yes, sir.

6 Q. And what happened then?

7 A. I had proceeded to ask him some things that I felt
8 needed to be addressed immediately, legal needs that I had.
9 Then I was told that I was to not talk about those things,
10 that those things wouldn't be done. I had asked to speak to
11 an attorney. And I was not going to be allowed to speak to
12 an attorney.

13 MR. BRIGGS: I would object to his testimony. We've
14 been through this.

15 MR. STILLEY: Your Honor, I'm just trying to --

16 THE COURT: Move on. Just move on.

17 BY MR. STILLEY:

18 Q. Okay. And what happened after that?

19 A. Well, as a reprimand I was shoved into the wall, the
20 sink counter. And then I was -- I froze. I mean, I couldn't
21 do anything. I was just scared. I had four or five other
22 guys around me. I mean, I felt like fighting back but I
23 couldn't do anything about it. And then I was told to go
24 take all my clothes off and go take a shower. And then he
25 proceeded to follow me into the shower. And Matt Elmore came

1 along with us, with him.

2 Q. Okay. Who followed you into the shower?

3 A. Matt Elmore and Bo Gerhardt.

4 Q. Did they watch you take a shower?

5 A. Yes, sir.

6 Q. Who was it that slammed you up against the wall?

7 A. Bo Gerhardt.

8 Q. How hard?

9 A. Very hard.

10 Q. Did it hurt?

11 A. Absolutely.

12 Q. Did it leave any marks?

13 A. I'm not aware of it.

14 Q. How long did it hurt?

15 A. That whole night.

16 Q. Did that cause any -- did that cause you any fright or
17 fear later on?

18 A. Absolutely.

19 Q. And can you describe that for the jury?

20 A. Yes, sir. There was no way of -- in a normal situation
21 you have -- you're able to make decisions on your own. And
22 you know what you believe and you go and you try to -- if
23 something is -- I saw things that happened at Mountain Park
24 and things that happened to me that --

25 MR. BRIGGS: Your Honor, may we approach?

1 THE COURT: Reask your question. This answer is
2 nonresponsive.

3 BY MR. STILLEY:

4 Q. Okay. What was the psychological impact of you on
5 being slammed up against the wall?

6 A. I was absolutely frightened.

7 MR. BRIGGS: I object. That requires expert
8 testimony.

9 THE COURT: Rephrase your question.

10 Q. Okay. Can you tell the jury what long lasting impact
11 that you suffered as a result of being slammed up against the
12 counter?

13 A. Well, I was scared all the time. Any time anybody
14 raised their hands around me, I was scared. I kept my mouth
15 shut. I did what I was told. I wasn't allowed to look at
16 other people. I didn't even -- there was no responsiveness
17 from me, it was like I became a zombie.

18 Q. And how long did these feelings last?

19 A. The entire time I stayed there.

20 Q. Did they stop immediately after you got out?

21 A. Oh, no.

22 Q. How long did they last after that?

23 A. Months.

24 Q. Now, playing football you took some pretty hard knocks,
25 did you not?

1 A. Absolutely.

2 Q. What would be the difference between getting knocked
3 down in football and getting slammed up against the wall?

4 A. There's rules and regulations. There's an official
5 sitting who is watching the game. If it's something that is
6 considered a foul --

7 MR. BRIGGS: Your Honor, I object. May we approach?

8 THE COURT: No. Sustained.

9 MR. BRIGGS: I'll ask the Court to instruct the jury
10 to disregard the testimony.

11 THE COURT: Rephrase your question. Overruled. No.
12 BY MR. STILLEY:

13 Q. Can you explain to the jury the difference between the
14 getting slammed up against the wall by Bo Gerhardt and being
15 struck in football by an opposing player?

16 MR. BRIGGS: I'll object, Your Honor.

17 THE COURT: Sustained.

18 Q. Why did you -- why did you suffer these ill feelings
19 for many months as a result of being battered by Bo Gerhardt?

20 A. I was scared.

21 Q. And why were you scared?

22 A. Because if that's the kind of behavior that is going to
23 happen, or that's the kind of action that's going to happen
24 just from me simply asking a question, then I can't do any --
25 I can't be responsive to anything throughout the next -- you

1 know, eight months or five months that I stayed.

2 Q. Well, now were you ever told about a no-touch policy
3 while you were at Mountain Park?

4 A. No, sir.

5 Q. Did you ever see any indication that there was a
6 no-touch policy?

7 A. No, sir.

8 Q. Did you ever see any indication that there was not a
9 no-touch policy?

10 A. Yes, sir.

11 Q. And what's the basis for your understanding of that?

12 A. Well, during orientation it has to be within slapping
13 distance of an orientation guide.

14 MR. BRIGGS: Objection, Your Honor. Move to strike.

15 MR. STILLEY: Your Honor, I'm just trying to show
16 the nature of the circumstances that he was in. Give the
17 jury some idea --

18 THE COURT: Hold on. You're talking about some
19 policy. Do you have some written statement?

20 MR. STILLEY: No. Apparently there isn't a written
21 statement, no-touch statement.

22 THE COURT: Fine. I'm not clearly understanding
23 what's being testified to.

24 MR. STILLEY: Okay. There's been previous testimony
25 about a no-touch policy. I'm asking him about his personal

1 knowledge about whether, in fact, there was a no-touch policy
2 enforced.

3 MR. BRIGGS: Your Honor --

4 THE COURT: Well, I mean, he has to -- what's the
5 basis of that?

6 MR. STILLEY: I'm trying to get his personal
7 knowledge.

8 THE COURT: You act like he is the administrator of
9 the school.

10 MR. STILLEY: No.

11 THE COURT: Then why don't you ask him the basis of
12 his knowledge.

13 MR. STILLEY: I'll be glad to. Certainly.

14 THE COURT: Overruled.

15 BY MR. STILLEY:

16 Q. Mr. Blair, what's the basis of your knowledge
17 concerning the actual operation of a no-touch policy at
18 Mountain Park and Palm Lane?

19 A. That there is none.

20 Q. And why do you -- what is your basis of personal
21 knowledge for saying that to the jury?

22 A. Well, I've seen Sam Gerhardt himself as I was walking
23 out of the boys' dorm grab --

24 MR. BRIGGS: Objection, Your Honor. Move to strike.

25 THE COURT: Sustained.

1 MR. STILLEY: Can I approach on that?

2 THE COURT: No. You were given these opportunities
3 to ask this question and it's just totally nonresponsive --

4 MR. STILLEY: I don't want to tread across the line.

5 THE COURT: -- about some other incident.

6 MR. STILLEY: I don't want to tread across the line.
7 I think I can shorten this for you if I can approach on this.

8 THE COURT: You try. Let's move on.

9 MR. BRIGGS: Your Honor, may I ask the Court to
10 instruct the jury to disregard.

11 THE COURT: No. We're moving on. We're moving on.
12 BY MR. STILLEY:

13 Q. Okay. What was the name of the student you just told
14 us about?

15 THE COURT: Hold on. I said we are moving on.

16 MR. STILLEY: I'm trying to move on.

17 THE COURT: Well, you got to try harder. Because
18 now you've told about another incident. I did not ask the
19 jury to disregard. You know, we weren't supposed to be there
20 no kind of way. You have crossed the line there. So let it
21 go and move on. I'm letting it go. Let's move on.

22 MR. STILLEY: I'm going to use another way to make
23 sure I don't step on that line.

24 THE COURT: Well, the way you're using it is not
25 working. You need to move to another subject.

1 MR. STILLEY: Okay.

2 BY MR. STILLEY:

3 Q. Disregarding anything that you previously talked about,
4 did you see anything that would give you personal knowledge
5 about whether or not there was, in fact, a no-touch policy in
6 effect at Mountain Park.

7 THE COURT: Okay. We're moving on from this. We
8 are moving on from this.

9 MR. STILLEY: Is he not going to be allowed to give
10 any other evidence concerning whether there was, in fact, a
11 no-touch policy? None at all?

12 THE COURT: We have tried this. You tried it
13 several times and then he wants to tell us about some other
14 incident.

15 MR. STILLEY: Your Honor, there was testimony
16 concerning a policy. What I'm trying to do --

17 THE COURT: Fine. Then he couldn't tell us. He
18 told us about something different, about something that
19 happened.

20 MR. STILLEY: What I'm trying to do is put forth
21 testimony that there is no such policy. De facto, the policy
22 is the exact opposite of what they said.

23 THE COURT: I never heard anybody say anything about
24 any policy other than you.

25 MR. STILLEY: It was Betty Wills.

1 THE COURT: Try this one more time. That's it.

2 Either -- you know, it's either you saw this in writing or
3 you were told, it is as simple as that. It is as simple as
4 that, by someone in authority, okay. Your witness.

5 MR. STILLEY: I don't understand what you're saying
6 though, Judge. I really don't understand.

7 THE COURT: When you asked him did he have any
8 knowledge about any such policy, he wants to talk about
9 something happened that was contrary to some policy rather
10 than policy. You asked him what his knowledge of a policy
11 was. Either he saw it in writing or was told by someone in
12 authority, okay. It is as simple as that.

13 MR. STILLEY: Well, what I'm trying to do --

14 THE COURT: Fine. Ask the question one more time.

15 BY MR. STILLEY:

16 Q. Do you have personal knowledge as to the -- strike
17 that. Do you know what I mean when I say de facto?

18 THE COURT: Oh, please. A whole lot of people don't
19 know what you mean when you say that. Come on.

20 Q. Let me put it like this. Do you understand what I mean
21 when I ask what the actual policy is?

22 THE COURT: Why don't you ask him this, did he see
23 something in writing or did somebody in authority tell him
24 that was the rule or the policy.

25 MR. STILLEY: I'm not concerned about that. I don't

1 have any interest in putting in any evidence about that.

2 THE COURT: Well, then where is the knowledge going
3 to come from?

4 MR. STILLEY: The knowledge is going to come from
5 actual observation, physical witness of this.

6 THE COURT: Overruled. Let's move on to the next
7 then. We're through with that. Let's go to the next
8 subject.

9 MR. STILLEY: Am I prohibited --

10 THE COURT: You are not permitted because you say
11 you have no evidence. Let's move on. You are prohibited
12 because you just told me you got no evidence.

13 MR. STILLEY: Wait a minute. What am I prohibited
14 from doing? I'm not trying to be hard.

15 THE COURT: From this whole situation about a
16 policy. You just told me that from observation. I mean, you
17 have to -- he has to have been told or seen it someplace or
18 where else is he going to get it from? What did he observe?
19 What he told us he observed was just the opposite. That's
20 what he told us he observed. Is that the policy? That's
21 what he observed. Now, you're going down the same road we've
22 been down. And I've sustained an objection to that. Okay.
23 So you can't go back down that road.

24 MR. STILLEY: Okay. I'm not trying to be difficult.

25 THE COURT: Yes, you are. Fine. Then go to another

1 subject matter.

2 MR. STILLEY: Okay. But I need to know exactly what
3 you mean when you say another subject matter.

4 THE COURT: Whatever else you want to put on,
5 because you've exhausted this one.

6 MR. STILLEY: Okay. What I'd like to do is to ask
7 about -- just what you asked me to ask, did somebody tell you
8 anything relating to the no-touch policy.

9 THE COURT: We're not talking about somebody walking
10 down the street or something, we're talking about somebody
11 who has a basis of authority or something in writing. You
12 asked him the policy. And then he wants to tell about
13 somebody slamming somebody else. Please. That's showing
14 that the policy is slamming. That's not showing the policy
15 is not about no touching. I mean, come on. That's not
16 responsive.

17 MR. STILLEY: Okay. If it doesn't violate the
18 Court's order, what I want to do is ask him whether he has
19 personal knowledge based on what you said, somebody telling
20 him, not doing but telling him or something in writing about
21 a policy related to --

22 THE COURT: Fine, then do that.

23 MR. STILLEY: Okay.

24 BY MR. STILLEY:

25 Q. Mr. Blair, do you have anything either in writing or

1 that was spoken to you by someone in authority of some sort
2 at Mountain Park concerning a no-touch policy or the policy
3 of Mountain Park and/or Palm Lane concerning touching other
4 students?

5 A. No, sir.

6 Q. Nothing either spoken or in writing?

7 A. No, sir.

8 THE COURT: You just asked that question. It took
9 all this time for us to get to that. I told you, move on
10 now.

11 Q. Now, when you got to Mountain Park, were you assigned
12 an orientation guide?

13 A. Yes, sir.

14 Q. Can you explain to the jury what an orientation guide
15 is?

16 A. The orientation guide is given in orientation to a
17 student which is basically they are the babysitter and they
18 watch the student. The student can't get out of arms length
19 or what they call slapping distance. They will be in the
20 bathroom with them at all times or that distance is kept at
21 all times throughout the day, whether it be in the shower or
22 school or whatever.

23 Q. And can you tell us what orientation means?

24 A. Well, there is different levels of freedom at Mountain
25 Park. On orientation you're basically stuck with that

1 orientation guide for, I believe I was told about two months.
2 Then you become a student, which would just be a single
3 student who can be in certain rooms by himself without having
4 an orientation guide as long as the orientation guide is
5 around. There are -- then there's the other level of
6 orientation guide and which is above the student level. And
7 they -- the only difference is they have orientation student.

8 Q. Okay. And when you first got there were you an
9 orientation student?

10 A. Yes, sir.

11 Q. Did you ever get off orientation?

12 A. No, sir.

13 Q. How long were you there?

14 A. Five months.

15 Q. And can you tell the jury what is meant by the term
16 staff worker?

17 A. Any of the defendants.

18 Q. Can you tell the jury what a junior staff worker is?

19 A. It's one of the students who works for the staff.

20 Q. Now, while you were at Mountain Park did you ever get a
21 copy of the rules?

22 A. No, sir.

23 Q. Did you ever ask for a copy of the rules?

24 A. Yes, sir.

25 Q. And what response did you get?

1 A. I wasn't able to have them.

2 Q. How did you find out what the rules were?

3 A. I didn't until after I left and ran away from Palm Lane
4 and filed a lawsuit.

5 Q. Did you kind of learn about rules just as you broke
6 them or as you did something they didn't like?

7 A. My orientation guide would tell me things and then
8 other things I did have to find out after them doing stuff to
9 me, punishing me.

10 Q. Okay. Were you allowed to have money while you were a
11 student there?

12 A. No, sir.

13 MR. BRIGGS: Objection, Your Honor. May we
14 approach? This is irrelevant. It's outside the scope of the
15 two claims.

16 THE COURT: Fine. Sustained. Let's move to
17 something relevant.

18 BY MR. STILLEY:

19 Q. Now, were you allowed to have contact with the outside
20 world while you were a student at Mountain Park?

21 A. No, sir.

22 THE COURT: Mr. Stilley, am I going to have go over
23 your notes, your script? You know, I mean, what does that
24 have to do with the two things I keep telling you?

25 MR. STILLEY: I'm just trying --

1 THE COURT: The battery and the employer/employee
2 stuff. What does that have to do with that, were you allowed
3 to have contact with the outside world, with other people?

4 MR. STILLEY: I'm just trying to paint a picture.

5 THE COURT: I know you're trying to paint a picture,
6 but that's not the picture we're here to see. We didn't come
7 to see that picture. See, that's what I'm talking about.
8 You got a picture you're just trying to show, and that is not
9 the one we came to see. That's what I keep trying to tell
10 you. I'm trying to keep from previewing your movie because
11 it's not the one we came to see, but you keep trying to show
12 it.

13 MR. STILLEY: I certainly don't mean to do anything
14 that I shouldn't do. I was just trying to --

15 THE COURT: Yeah, you're a nice fellow, but that's
16 not got nothing to do with it. I mean, please. I'm not here
17 about that. What I'm trying to say is you keep trying to
18 paint a picture that we didn't come to see. It might be the
19 picture you see, the picture you like, but it's not the
20 picture we're here to see. It's as simple as that.

21 MR. STILLEY: Well, I'm doing my best to put on
22 evidence that is proper to put before the jury. I beg your
23 pardon, Your Honor, I'll need just a little time to try to
24 sort through some of these things to try to limit the
25 questions that I shouldn't ask.

1 THE COURT: I'll tell you what, ladies and gentlemen
2 of the jury, we're going to have a pleasant evening. We're
3 going to adjourn early today.

4 I gave you that admonition earlier. It particularly
5 goes into effect now because you're going home or someplace
6 from here. Now, all that admonition is good, but let me boil
7 this down to its essence. Your friends and family will know
8 you've been down here on jury service. So when you get
9 wherever you're going, they are going to ask, "Did you get
10 selected to serve on a case?" The answer to that is, "Yes."
11 Then the next question is, "Well, what kind of case is it?"
12 The answer to that is, "The judge told me not to discuss that
13 with you." Because if you tell them that, then they are
14 going to tell you what they think, what they know. You see,
15 admonition gone.

16 So keep that in mind. You can discuss this case as
17 fully and freely when it's completed. They told me, they
18 said Wednesday, but in any event you can discuss it as fully
19 and freely with anyone you choose when it's over. Why don't
20 you return to your jury rooms tomorrow morning at 9 a.m.
21 Have a pleasant evening.

22 (The following proceedings were held outside the
23 hearing of the jury:)

24 THE COURT: Mr. Stilley, you know, it's like we
25 are -- maybe we're here to see Spartacus or something and you

1 keep trying to show us The Passion. You want The Passion.
2 Please. You know, this is not that case. I understand. I
3 keep telling you, I feel your pain. Just like The Passion.
4 But this is not that play, okay. We didn't come here to see
5 that. I told you what we came here to see.

6 MR. STILLEY: Certainly, Judge, and --

7 THE COURT: I know, but you got to do better. Sorry
8 sounds good, but you got to show me something. You keep,
9 could you do this, could you do that. Talk to me about what
10 he did do in terms of work or school, his responsibilities.
11 Maybe you finished with the battery situation. So you got to
12 deal with his responsibilities, you know, at the institution
13 now, what you are characterizing as work and the
14 employer/employee relationship, not his contact with outside
15 people and any of those kinds of things. You're still trying
16 to paint the picture of the institution as a group of bad
17 people.

18 MR. STILLEY: Your Honor, I'm just trying --

19 THE COURT: Yes, you are. That's what you're trying
20 to do. And that is not what this case is about. And I
21 understand The Passion, but that is not this case. It's as
22 simple as that.

23 MR. STILLEY: Maybe I'm going at it the wrong order.

24 THE COURT: The wrong order?

25 MR. STILLEY: This is part of the case. And let

1 me --

2 THE COURT: You are out of order completely.

3 MR. STILLEY: Well, let's stop and think about this.
4 We've already had a ruling that he's entitled to put on
5 evidence as duties as a security guard. What's the duties of
6 the security guard.

7 THE COURT: You didn't ask that. You asked about
8 could he see other people. You want to paint all these
9 pictures like he's in prison, false imprisonment. That's the
10 picture you're painting. And you know the rules are if
11 something is more prejudicial than probative. And when you
12 paint this picture of someone false imprisoning someone, it
13 becomes more prejudicial than probative of what the issues
14 you're trying to paint. And those claims are gone. They are
15 not here.

16 You know, it's like a guy said one time, you know,
17 one year Casey Stengel, you know he was the manager of the
18 Mets. So he figured out he was going to have his pitching
19 rotation for the whole year. And he had it all set up. The
20 first game rained out, messed up his whole year. That's you.

21 MR. STILLEY: Your Honor, I'm sorry.

22 THE COURT: Your issues that you wanted are no
23 longer in the case, but, you know, you got your pitching
24 rotation set up for all that. They are not there anymore.
25 You know, things have changed. You have to change your

1 questions you're asking. That's all I'm saying.

2 MR. STILLEY: Okay. Well, I think that -- I think
3 it's order, not substance for this reason. If I could lay
4 the foundation, that's what I was trying to do.

5 THE COURT: That he couldn't see people, that he
6 wasn't seeing anybody else? Tell me what that has to do with
7 any of the issues, the battery or the employment. I assume
8 you're saying that has to do with the employment. What does
9 that have to do with the employment?

10 MR. STILLEY: One of his job duties as an employee
11 was to prevent other people from making contact with the
12 outside world, going anywhere, doing anything of that nature.

13 THE COURT: That doesn't have anything to do with
14 him, whether he could see somebody or not. Was that his job,
15 seeing that he couldn't see nobody, policing himself? Is
16 that the job? Please.

17 MR. STILLEY: Let's --

18 THE COURT: No, you were off base there. You were
19 off base there.

20 MR. STILLEY: Let's just try this again.

21 THE COURT: You need to go over your questions and
22 sincerely ask yourself these questions. And remember me
23 Casey Stengel story. You see what I'm saying? I tell stuff
24 in stories. You could say it was LaRussa or whoever, but
25 older folks remember Casey. I'll see you all tomorrow

1 morning.

2 MR. STILLEY: Thank you, Judge.

3 THE COURT: Okay.

4 (Court in recess at 4:33 p.m.)

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C E R T I F I C A T E

I, Susan R. Moran, Registered Merit Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that I was present at and reported in machine shorthand the proceedings in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that I am not attorney for, nor employed by, nor related to any of the parties or attorneys in this action, nor financially interested in the action.

I further certify that this transcript contains pages 1 - 160 and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

IN WITNESS WHEREOF, I have hereunto set my hand at St. Louis, Missouri, this _____ day of _____, 2004.

/s/ Susan R. Moran
Registered Merit Reporter